PART II.

LOCAL ACTS OF THE GOVERNOR GENERAL IN COUNCIL IN FORCE IN BOMBAY.

ACT No. XIX OF 1835.[1]

[THE DEKKHAN ASSISTANT AGENT'S APPOINTMENT ACT, 1835.]

[*9th November, 1835.*]

Appointment and powers of Assistant to Agent for Sardárs in Dekkhan.

BE it enacted, that it shall be competent for the Governor in Council of Bombay to appoint the Assistant Judge of the Zila Court of Puna to be Assistant to the Agent[2] for Sardárs in the Dekkhan ;

and it shall be competent to the Agent for Sardárs to refer to his Assistant original suits against Sardárs for amounts not exceeding five thousand rupees[3] * * * * * * ;

and every decree of the Assistant shall be open to an appeal to the Agent within (30) thirty days from the date of the decree ; and every decision of the Agent on such appeal shall be open to a special appeal[3] * * * * to the Governor in Council, or to the Sadr Adálat, according as the rank of the Sardár may subject him to the jurisdiction of either authority : Provided that such last-mentioned appeal shall be brought within (90) ninety days after the date of the decree of the Agent.

Procedure in appeal to Governor of Bombay in Council.

[4][2. The provisions of the [5]Code of Civil Procedure relating to appeals to a High Court from decrees passed in appeal shall apply, so far as may be, to appeals to the Governor in Council under this Act].

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[1] *Cf.* s. 4 of the Code of Civil Procedure, 1908 (Act 5 of 1908), General Acts, Vol. VI.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[2] As to the Agent, *see* Bom. Reg. 29 of 1827, s. 4, clause *first*, *supra*.

[3] The words "and in the trial of such suits the Assistant shall follow the same rules which are now applicable to the Agent" and the words and figures "under the provisions of Chapter XXII, Regulation IV of 1827 of the Bombay Code" were repealed by the Repealing and Amending Act, 1891 (12 of 1891), General Acts, Vol. IV.

[4] S. 2 was added by the Repealing and Amending Act, 1891 (12 of 1891), General Acts, Vol. IV.

[5] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), General Acts, Vol. VI.

ACT No. XVI OF 1838.[1]

[THE BOMBAY COURTS OF ADALAT ACT, 1838.]

[*23rd July, 1838.*]

Suit to be brought in Civil and not Revenue Courts.

1. *First.* [2]* * * * * In the territories subject to the Presidency of Bombay, all suits in regard to tenures, and the nature and extent of the interest and advantage which in virtue thereof should be enjoyed by the parties concerned, and all suits in which the right to possession of land [3]* * * * * * is claimed, shall be brought in the Courts of Adálat and the Courts subordinate thereto, and not in the Courts of revenue.

Second.—[*Summary jurisdiction of Revenue Courts in giving possession.*] *Rep. Bom. Act III of 1876.*

Third.—[*Saving of certain jurisdiction of Revenue Courts.*] *Rep. Bom. Act II of 1866.*

Procedure on suits being presented to superior Court doubting its jurisdiction;

2. [4]* * * * * If a suit be presented in the Court of a Judge or Collector, which such Judge or Collector shall not deem within his jurisdiction, the party presenting such suit shall be referred by the Court in which it may be first presented to that in which, in the opinion of such Court, the jurisdiction lies, and the latter Court shall, in the event of its doubting its jurisdiction in the case, refer the question of jurisdiction to the Sadr Díwání Adálat, whose decision on the point shall be final.

and in subordinate Court so doubting.

3. [4]* * * * * If a suit be presented in any Court subordinate to the Court of a Judge or Collector, which suit such subordinate Court shall not deem to be within its jurisdiction, such subordinate Court shall submit the case to the Judge's or Collector's Court to which such subordinate Court is subordinate; and, if the superior Court to which the case is so submitted shall be of opinion that such subordinate Court has jurisdiction in the case, such superior Court shall direct such subordinate Court to proceed with the case; and, if such superior Court shall be of opinion that such subordinate Court has not jurisdiction in the case, such superior Court shall proceed in the manner directed in the last preceding section.

Transfer of suit entered in Court not

4. [4]* * * * * Whenever a Court of Adálat or a Revenue Court shall have entered on its file, under this Act, a suit in which it has not jurisdiction, it shall be competent to the Sadr Díwání Adálat, either on a reference

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[1] This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 5, General Acts, Vol. II, to be in force in the whole of the Bombay Presidency except as regards the Scheduled Districts. The short title was given by Bombay Act 2 of 1921, Vol. V of this Code.

[2] The words and figures "It is hereby enacted, in modification of the rules contained in Chapter VIII, Regulation XVII of 1827 of the Bombay Code, that" were repealed by the Repealing Act, 1870 (14 of 1870).

[3] The words "or of the wuttuns of hereditary district or village officers" were repealed by the Bombay Revenue Jurisdiction Act, 1876 (10 of 1876), *infra*.

[4] The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

from the Judge or Collector (as the case may be), or on application from the parties, to direct that the suit be transferred, with all the proceedings which may have taken place therein up to the period of transfer, to the Court possessing jurisdiction, which shall proceed therewith as if the suit had been originally filed in that Court. having jurisdiction.

5. [1]* * * * When any Court trying an appeal finds that the action was originally brought and decided in a Revenue Court, when it ought to have been brought and decided in a Court of Adálat, or a Court subordinate thereto, or that the action was originally brought and decided in a Court of Adálat, or a Court subordinate thereto, when it ought to have been brought and decided in a Revenue Court, the Court trying the appeal shall, instead of quashing the whole proceedings, annul only the decree and refer the suit to be tried in the Court to which the jurisdiction properly belongs [2]* * * * * * ; and the Court trying any such case referred under the foregoing section shall take further pleadings, exhibits and evidence only if it deem such necessary, and shall pass a new decree [2]* * * * * *. Procedure on Court of Appeal finding original suit was decided in wrong Court.

6. [*Pending suits and appeals.*] *Rep. Act XVI of 1874.*

ACT No. XIX OF 1838. [3]
[THE BOMBAY COASTING-VESSELS ACT, 1838.]

[*27th August, 1838.*]

1. [*Repeal of enactments.*] *Rep. Act XIV of 1870.*

2. [4]* * * * * * The following rules shall be in force with respect to vessels belonging to any of Her Majesty's subjects residing within the Presidency of Bombay, and employed on the coasts of the territories subject to the Government of Bombay, or in trading coastwise, as also with respect to fishing-vessels and harbour-craft belonging to any of the same Her Majesty's subjects. Rules as to coasting and other vessels belonging to Queen's subjects.

3. [4]* * * * * * Every such vessel employed as aforesaid, fishing-vessel and harbour-craft shall be marked or branded with the name of the place Marking or branding vessels with

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[1] The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The words "without further costs of stamps to the parties, except on new exhibits, if any such should be allowed to be filed", and the words "but if an appeal be made from such new decree by the party originally bringing the appeal, then the decree of the Court trying such new appeal shall be passed without the cost of a new stamp on the petition of appeal to that party" were repealed by the Repealing Act, 1870 (14 of 1870).

[3] This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 5, General Acts Vol. II, to be in force in the whole of the Bombay Presidency, except as regards the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in the Province of Sindh—*see* Appendix, p. 313, *infra*.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[4] The words and figures "And it is hereby enacted, that from the said first day of November 1838," and the words "And it is hereby enacted, that" were respectively repealed by the Repealing Act, 1874 (16 of 1874).

name of place and number.

to which she belongs, and also with a number assigned for the same by the officer authorised to make such registry as is hereinafter mentioned;

Owner to paint name and number.

and the owner or owners of such vessel employed as aforesaid, fishing-vessel and harbour-craft shall cause such name and number to be painted in black paint upon a white ground on each quarter of such vessel employed as aforesaid, fishing-vessel and harbour-craft, in English figures and letters, each figure and letter being six inches in length.

Registry of name, number and burthen.

4. [1] * * * * * * The name and number of every such vessel employed as aforesaid, fishing-vessel and harbour-craft, and her burthen, and also the name or names of the owner or owners thereof, shall be registered in a book to be kept for that purpose by the person hereinafter directed to make such registry.

Registry by whom to be made.

At Bombay such registry shall be made by the Master-Attendant, and at other places within the said territories by the Collector of Sea-customs at such places respectively, or by such other person as shall be appointed [2] by the Government of Bombay to act at such places respectively, in the execution of this Act; and whenever any change shall take place in the burthen of such vessel employed as aforesaid, fishing-vessel or harbour-craft, or in the name or names of the owner or owners thereof, such registry shall be made again:

Fresh registration.

Provided, however, that it shall not be lawful to give any name to such vessel employed as aforesaid, fishing-vessel or harbour-craft, other than that by which she was first registered.

Owners to apply for registry.

5. [1] * * * * The owner or owners of every such vessel employed as aforesaid, fishing-vessel and harbour-craft shall apply to the person authorized to make such registry in respect of the same, in order to have such registry as aforesaid made, or in order to have such registry made again as aforesaid.

Information of registry at subordinate port.

And whenever such vessel employed as aforsaid, fishing-vessel or harbour-craft is registered at a subordinate port, information thereof, and of the number there assigned to her, shall immediately be given by the registering officer to the Master-Attendant at Bombay.

Officers to perform duty of marking and branding.

6. [1] * * * * * The duty of marking or branding and of ascertaining the burthen of such vessels employed as aforesaid, fishing-vessels and harbour-craft, at Bombay, shall be performed by the Master-Attendant; and at all other places within the territories subject to the Government of Bombay, the duty of marking or branding and of ascertaining the burthen of such vessels employed as aforesaid, fishing-vessels and harbour-craft shall be performed by

[1] The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

the Collector of Sea-Customs at such places respectively, or by such other persons as shall be appointed by the Government of Bombay to act at such places respectively, in the execution of this Act.

7. [1] * * * * *The owner or owners of every such vessel employed as aforesaid, fishing-vessel and harbour-craft shall apply for and obtain a certificate of registry from the person authorised to make such registry as aforesaid, and such certificate shall be in the form specified in the Schedule appended to this Act ; and in the case of any certificate being lost or destroyed, a renewed certificate may be obtained in the same manner and on payment of the fees hereinafter mentioned. Owner to obtain certificate of registry. Replacing lost certificate.

8. [1] * * * * * Such certificate of registry shall be sealed with the seal of the East India Company, and shall be signed by the person authorized to make such registry. Sealing certificate.

9. [*Dates for commencement of certificate and registration.*] *Rep. Act XII of 1876.*

10. [1] * * * * * The owner or owners of such vessels employed as aforesaid (fishing-vessels and harbour-craft being excepted), on being registered as aforesaid, shall pay— Fees for certificates.

for each certificate of registry for a vessel not exceeding 20 Bombay khandís burthen, the fee of	1 rupee.
for each certificate for a vessel exceeding 20 such khandís burthen, and not exceeding 100 khandís burthen	5 rupees.
for each certificate for a vessel exceeding 100 such khandís burthen and not exceeding 400 khandís burthen	7 rupees.
and for each certificate for a vessel of 100 tons or greater burthen, per ton	2 annas.

11. [1] * * * * * The person or persons so authorized to make such registry as aforesaid shall receive the fees payable for the same, and shall pay such fees to such officer as the Governor of Bombay in Council shall appoint ; the same to be carried to the credit of the Government of Bombay. Fees to be credited to Government.

12. [1] * * * * * The owner or owners or commander of every such vessel employed as aforesaid, fishing-vessel and harbour-craft shall produce, on demand thereof by any officer of the Customs within the said territories, or by any officer of the [2] * Navy, the certificate so directed to be applied for and obtained, in respect of such vessel employed as aforesaid fishing-vessel or harbour-craft, as above mentioned. Production of certificate on demand.

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[1] The words " And it is hereby enacted, that " were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The word " Indian " was repealed by the Repealing Act, 1876 (12 of 1876).

Penalty for neglect to comply with rules.

13. [1] * * * * * In case any such vessel employed as aforesaid, fishing-vessel or harbour-craft shall not be so marked or branded in all respects as hereinbefore directed, or in case the name and number of any such vessel employed as aforesaid, fishing-vessel or harbour-craft shall not be so painted, or shall not continue so painted on such vessel employed as aforesaid, fishing-vessel or harbour-craft, in all respects as hereinbefore directed;

or in case any such vessel employed as aforesaid, fishing-vessel or harbour-craft shall not be furnished with such certificate as hereinbefore specified, or in case the owner or owners or commander of any such vessel employed as aforesaid, fishing-vessel or harbour-craft shall not produce such certificate on demand thereof as hereinbefore directed;

the owner or owners of every such vessel employed as aforesaid shall be subject to a fine of ten times the amount of the fees payable in respect of the certificate of registry of such vessel, the same being a vessel for the certificate of the registration of which any fee is payable; and the owner or owners of any such fishing-vessel or harbour-craft shall be subject to a fine of ten rupees;

Recovery of penalties.

which fines may be recovered on conviction before any Magistrate [2] * * * * * having jurisdiction within the said territories, by sale of such vessel, fishing-vessel or harbour-craft, her furniture, ammunition, tackle and apparel;

Penalty on repetition of default.

and such fines shall be payable as often as the owner or owners or commander of any such vessel employed as aforesaid, fishing-vessel or harbour-craft shall make such default as aforesaid: Provided every such subsequent default be made after the expiration of one month from the date of the last conviction.

Power to direct compensation for trouble in seizing.

14. [1] * * * * * The Governor of Bombay in Council may direct compensation for trouble and diligence in seizing such vessel employed as aforesaid, fishing-vessel or harbour-craft, guns, furniture, tackle, ammunition and apparel, as last mentioned, to be made, out of the proceeds of such seizure to the person or persons who shall have seized the same, to such amount, in such manner and in such shares or proportions, as to the said Governor in Council shall seem meet.

15. [*Port-clearance.*] *Rep. Act XII of 1876.*

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[1] The words "And it is hereby enacted, that" were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The words "Justice of the Peace, or person exercising the powers of a Magistrate" were repealed by the Repealing Act, 1876 (12 of 1876).

SCHEDULE.[1]

This is to certify that (*here insert the names, occupation and residence of the owners*) having declared that (he *or* they) are sole owner or owners of the vessel (fishing-vessel *or* harbour-craft) called (*the name*) which is of the burthen of (*number of Bombay khandis*) and that the said vessel (fishing-vessel *or* harbour-craft) was (*where and when built*), the said vessel (fishing-vessel *or* harbour-craft) has been duly registered at the port of (*name of port*).

Certified under my hand.

(*Signature of Officer.*)

ACT No. XX OF 1839.[2]

[THE BOMBAY HAQQA PROHIBITION ACT, 1839.]

[*29th July, 1839.*]

Power to prohibit levy of haqqs, fees and customs.

1. [3]* * * * * It shall be lawful for the Governor in Council of Bombay to issue orders prohibiting the levy of haqqs and fees of every description, and customs, whether by land or sea, enjoyed by holders of rent-free lands or other persons, and of alienated shares of any item of revenue after the abolition or relinquishment thereof by Government.

Past and future prohibitions not to be questioned by any Court.

2. [3]* * * * * The legality of any orders which may have been heretofore issued, or of any orders which, conformably with this Act, hereafter shall be issued, by the Governor in Council of Bombay, for prohibiting the levy of any such haqqs, or fees, customs or alienated shares of any such item of revenue as aforesaid, shall not be questioned in any Court of law.

Penalty for levy after prohibition.

3. [3]* * * * * Whoever shall levy any such haqq, fee, customs or item of revenue after any such order prohibiting the same as aforesaid shall have been published in the Government Gazette of the Presidency of Bombay, and by notice fixed at the post or place at which it has heretofore been claimed or collected or called [4] [shall, whether he is or is not a Revenue-officer of Government, be punishable with imprisonment for a term which may

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[1] *See* s. 7, *supra*.

[2] This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 5, General Act, Vol. II, to be in force in the whole of the Bombay Presidency, except as regards the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in the Province of Sindh—*see* Appendix, p. 318 *infra*.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[3] The words "It is hereby declared and enacted, that" in s. 1 and the words "and it is hereby enacted, that" in ss. 2 and 3 were repealed by the Repealing Act, 1874 (16 of 1874).

[4] This clause was substituted for the words and figures "shall be punishable as for an undue exaction under Regulation XVII of 1827, section XVI, of the Bombay Code, notwithstanding the offender be not a Revenue-officer of Government" by the Amending Act, 1894 (4 of 1894), *infra*.

extend to seven years, and shall also be liable to fine not exceeding ten times the amount of the sum so levied].

ACT No. XV OF 1840.[1]

[THE BOMBAY REGULATION XIII OF 1830 (APPLICATION) ACT, 1840.]

[*29th June, 1840.*]

An Act for extending Regulations XV *of 1827*[2] *and* XIII of 1830[3] of the Bombay Code to the Agents of foreign Sovereigns

Extension of Bom. Reg. XIII of 1830 to Agents of foreign Sovereigns and others.

IT is hereby enacted that the provisions of Regulations *XV of 1827*[2] and XIII of 1830[3] of the Bombay Code be made applicable to the Agents of foreign Sovereigns having lands and possessions in the British territory of the Bombay Presidency, and to guardians and such other individuals as the Governor in Council of Bombay may consider it expedient to invest with the powers contained in the aforesaid Regulations : Provided that in all cases the authority conferred shall be revocable at the discretion of the Governor in Council of Bombay.

ACT No. XIX OF 1844.[4]

[THE BOMBAY TOWN-DUTIES ABOLITION ACT, 1844.]

[*14th September, 1844.*]

An Act for abolishing town-duties and mukáts, and all taxes upon trades and professions, within the Presidency of Bombay.

Abolition of town-duties and taxes.

IT is hereby enacted that, from the first day of October, 1844, all town-duties, kasab veras, muhtarafas, baluteh taxes and cesses of every kind on trades or professions under whatsoever name levied within the Presidency of Bombay and not forming a part of the land-revenue, shall be abolished.

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[1] This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 5, General Acts, Vol. II, to be in force in the whole of the Bombay Presidency, except as regards the Scheduled Districts.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

Every jāgirdār and other authority invested with powers under Bom. Reg. 13 of 1830 and Act 15 of 1840 shall, for the purposes of the Dekkhan Agriculturists' Relief Act, 1879 (17 of 1879) be deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct—*see* Act 17 of 1879, s. 2A, *infra*.

Cf. s. 4 of the Code of Civil Procedure, 1908 (Act 5 of 1908) General Acts, Vol. VI.

[2] Act 15 of 1840, so far as it relates to Bom. Reg. 15 of 1827, was repealed by the Repealing Act, 1874 (16 of 1874).

[3] *Supra.*

[4] This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), s. 5, General Acts, Vol. II, to be in force in the whole of the Bombay Presidency, except as regards the Scheduled Districts. It has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in the Province of Sind—*see* Appendix, p. 315, *infra*.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

ACT No. XI OF 1852.[1]

[THE BOMBAY RENT-FREE ESTATES ACT, 1852.]

[*13th February, 1852.*]

An Act for the Adjudication of Titles to Certain Estates claimed to be wholly or partially Rent-free in the Presidency of Bombay.

WHEREAS in the territories of the Dekkhan, Khándesh and Southern Marátha Country, and in other districts more recently annexed to the Bombay Presidency, claims against Government on account of ináms and other estates wholly or partially exempt from payment of land-revenue are excepted from the cognizance of the ordinary Civil Courts [2] * * * * ; Preamble.

and whereas it is desirable that the said claims should be tried and determined without further delay ;

It is declared and enacted as follows :—

1. [*Rules not applicable to certain districts.*] *Rep. Act IV of 1894.*

2. The Governor of Bombay in Council may appoint in any zila or other division of the territories subject to the Presidency of Bombay, which were not brought under the general Regulations of Government by [3] * * * Regulation [4] XXVIII of 1827, an Inám Commissioner with so many Assistants, and such subordinate establishment, as may be necessary for the purposes hereinafter mentioned. Power to appoint Inám Commissioner, with Assistants and establishments.

3. The duties of each Inám Commissioner and his Assistants shall be discharged according to the rules in Schedule A annexed to this Act. Duties how discharged.

4. In the adjudication of claims to exempt lands or interests therein, the titles of claimants shall be determined by the rules in Schedule B annexed to this Act. Determination of titles of claimants to exemption.

5. Each Inám Commissioner and his Assistants shall have the same authority to procure the attendance of witnesses, and to take evidence, as now is, or from time to time may be, by law vested in the ordinary Civil Courts ; and so far as concerns the penalties for not giving evidence, for false testimony, for residence of process, contempts and other like matters connected with cases under cognizance by any one of the said officers, his office shall be Powers to enforce attendance of witnesses to take evidence, etc.

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[1] As to the application of this Act, *see* the Bombay Land-revenue Code, 1879 (Bom. Act 5 of 1879), s. 127, Vol. II of this Code.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[2] The words and figures " and incapable of being justly disposed of under the rules for the determination of titles and the rules of procedure contained in Chapters IX and X of Regulation XVII of 1827 of the Bombay Code and their supplements" were repealed by the Repealing and Amending Act, 1894 (4 of 1894).

[3] The words " the said " were repealed by the Repealing and Amending Act, 1894 (4 of 1894).

[4] Bom. Reg. 28 of 1827 was repealed by the Repealing Act, 1873 (12 of 1873).

held to be a Court of civil jurisdiction of the same authority as the superior Civil Court of the zila or district in which his office from time to time shall be established.

Complaints against, or appeals from, proceedings of Commissioner and Assistants.

Provided that all complaints against, or appeals from, the proceedings of the Inám Commissioner or any of his Assistants in exercise of the authority conferred on them respectively by this section, shall be made under the second rule of Schedule A annexed to this Act : and shall not be cognizable by any other authority or in any other manner than as therein specified.

Punishment of misconduct of officers on Commission.

6. Bribery, extortion, and generally all acts of abuse or misapplication of authority, or other misconduct, committed by any officer belonging to the establishment of the Inám Commission, or temporarily employed therein under the provisions of this enactment, shall be punishable as criminal offences with fine and ordinary imprisonment without labour for a period not exceeding five years, and the receipt of a present, directly or indirectly, by any such officer from any person against whom or in whose behalf he may be officially employed, shall be considered extortion.

Extortion defined.

Other prosecution not barred.

And no penalty or punishment adjudicated under this clause shall preclude any other civil prosecution to which the offender may be liable.

7. [*Jurisdiction of Courts barred.*] *Rep. Act X of 1876.*

SCHEDULE A.

Rules for defining the Duties of each Inám Commissioner and his Assistants.

Duty defined.

1. The duty of the Inám Commissioner and his Assistants shall be to investigate, in the manner prescribed by this enactment, the titles of persons holding or claiming against Government the possession or enjoyment of ináms or jágírs, or any interest therein, or claiming exemption from the payment of land-revenue, and generally to act according to the instructions of Government in all matters not specifically provided for in this enactment.

Appeal from orders of Assistant Commissioners and Commissioner.

2. All orders of the Assistant Commissioners shall be appealable to the Inám Commissioner, who shall also have the authority of revising and of modifying, reversing or annulling, if necessary, their orders and proceedings, and the orders and proceedings of the Inám Commissioner shall be in like manner appealable to, and subject to modification, reversal or annulment by, the Governor of Bombay in Council, whose orders shall in every case be final.

Duty to receive statements of title

3. The Inám Commissioner or his Assistants shall receive from the persons, holding or claiming to hold lands or any interest therein exempt from the

payment of revenue, statements explaining the nature of the title by which the lands or interests are so held, and shall take and record the evidence offered in support of such statements. and record evidence in support.

4. These statements may be received either directly by the officers of the Inám Commission, or through the medium of the revenue-authority of the táluqa in which the land or interest so held or claimed as exempt is situated, or in which the alleged proprietor resides, without any previous procedure, except a general invitation to such landholders of a district who shall hold or claim to hold lands exempt as aforesaid to state the nature of their titles. Statements how received.

5. But, when such general invitation is not sufficiently attended to, a notice may be issued to any party holding or claiming to hold any lands or any interest therein wholly or partially exempt as aforesaid, requiring him, personally or by his agent, to show his title. Notice when to issue.

The notice issued in such cases shall state the nature of the investigation which is intended, and shall call upon the alleged proprietor of the exempt lands or interest, held or claimed to be held exempt as aforesaid, to attend either personally or by an authorized agent, at a specified place, and within a specified period (which shall never be less than two months from the date of the notice being served), to explain the nature of his title to hold such lands or interest exempt as aforesaid, and to produce all the evidence forthcoming to prove it. Contents of notice.

The notice shall further explain that a failure to comply with its terms will render the land, or interest to which it relates, liable to attachment.

6. The notice shall be served upon the party holding or claiming to hold the land or interest exempt as aforesaid, or, if his place of residence be not known, upon the person acting for him, or, in default of such, upon the person in charge of the land or interest. Service of notice.

7. If such persons cannot be found, a notice shall be posted in the office of the Native Revenue-officer of the district, and in the chauri, or most public place of the village where the land or interest under inquiry is situated, calling on any person who may claim as proprietor to appear, either personally, or by his agent, to prove his title within six months from the date of the notice, under penalty of the attachment of the land or interest, and, on failure of the appearance of a claimant, the land or interest shall be liable to attachment. Posting notice when landholder not found.

8. The attachment provided for by rules 5 and 7 shall be enforced by the Collector or chief revenue-authority of the district in which the land to which it relates is situated, at the written requisition of the Inám Commissioner or his Assistant, which shall be a sufficient warrant to the Attachment by whom enforced.

Collector for the attachment of the land, and for the collection of the rents accruing therefrom on account of Government during its attachment.

Procedure on receipt of statements and evidence of title.

9. As soon as possible after the receipt of the statements in each district and of the evidence by which they are supported, they shall be tested by the entries in the Government accounts and State records, and by any other evidence procurable, whether in favour of Government or of the claimants, and decisions shall then be passed on them as to the continuance, resumption or full or partial assessment of the lands.

Procedure on failure of notice to procure attendance.

10. In cases where the notices provided for in sections 5 and 7 fail to procure the attendance of the persons to whom they are addressed, and no claimant appears to prosecute his claim, the Commissioner or Assistant Commissioner shall proceed to ascertain the facts of the case from such evidence as may be forthcoming or procurable, and shall pronounce such decision thereupon as to him shall seem just regarding the lands or interests to which the notices referred.

Removal of attachment.

11. An attachment enforced under rule 8 shall be removed by the Collector or chief revenue-authority by whom it was made, on receipt of a communication from the Inám Commissioner or his Assistant, certifying that he considers the attachment to be no longer necessary; but the rents collected from the land during its attachment shall in no case be restored to the alleged proprietor, except under the general or special instructions of Government.

Restoration to proprietors of rents collected.

Copies of decisions to be delivered to claimants.

12. Certified copies of decisions, made according to the provisions of rule 9, shall be delivered, as soon as possible after each decision is passed, to the persons on whose claims the decision shall have been pronounced, or their agents; and copies of all decisions made in the absence of any claimant according to the provisions of rule 10 shall be sent to the mámlatádr, or other revenue-manager of the táluq in which the lands to which they relate are situated, who shall deliver them to the parties affected by them, should they be discoverable, or otherwise cause them to be publicly posted in the village to which the lands in question belong.

Copies of decisions made in their absence how dealt with.

Execution of decision.

13. Decisions affecting any lands or any interests therein passed under this enactment shall be carried into execution by the Collector or chief revenue-authority of the district in which the lands to which they relate are situated at the requisition of the Inám Commissioner or his Assistant, in any manner which may, from time to time, be prescribed by the Governor of Bombay in Council.

Procedure in appeal.

14. In all cases where a person may be desirous of appealing against any decision of the Inám Commissioner or his Assistants, he shall apply by

a petition, addressed to the authority by whom, according to rule 2, his appeal is cognizable, which petition shall be presented to such authority within one hundred days from the date of the decree appealed against, a copy of which must accompany the petition of appeal, and no appeal which is not so made shall be admitted, without proof of the existence of a just and necessary cause for its not having been preferred in due time; and it is hereby provided that no decree passed by the Inám Commissioner or any of his Assistants shall be liable to be set aside for want of form in the proceedings, but only for matters affecting the justice of the decision.

Setting aside decrees.

SCHEDULE B.

Rules for the Adjudication of Titles to Estates claimed as Inám or exempt from payment of Land-revenue.

1. All lands held under a specific and absolute declaration by the British Government, or any competent officer acting under it, that they were to be continued hereditarily or in perpetuity exempt, wholly or partially, from the payment of revenue, are to be so continued according to the purport of such declaration.

Continuance of ináms already declared permanent.

Provision 1st.—If any question shall arise as to the competency of the officer to make or give such declaration as aforesaid, the Commissioner or Assistant Commissioner is to suspend his judgment, and report the circumstances of the case to the Governor of Bombay in Council, to whom a power is hereby reserved of determining finally whether such officer was competent to make or give such declaration, and the Commissioner or Assistant Commissioner, upon receiving the determination of the said Governor in Council, shall decide accordingly.

Disposal of question as to competency to make declaration.

2. Any land held under a sanad declaring it to be hereditary shall be so continued according to the terms of the sanad.

Continuance of holding under sanad declaring it hereditary, where granted by competent authority,

Provision 1st.—Provided that the grant was either made, or specifically recognised, by authority competent to alienate Government revenue in perpetuity, the question of which recognition and competency is to be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

Provision 2nd.—And provided that there be nothing in the conditions of the tenure which cannot be observed without a breach of the laws of the land, or the rules of public decency.

and conditions of tenure legally observable;

and grant not revoked, disallowed or altered.

Provision 3rd.—And provided that the grant was not afterwards revoked or disallowed, or an alteration of its terms ordered or recognized by a competent authority.

Continuance of holdings exempt or partially exempt for sixty years before British rule.

3. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of sixty years before the introduction of the British Government, and then in the authorized possession of a grandson in male descent or male heir of th body of such grandson, of the original grantee, shall continue to be so held so long as there shall be in existence any male heir of the body of the person who was incumbent at the introduction of the British Government, tracing his lineage from such incumbent through male heirs only.

Continuance of holdings so exempt for forty years.

4. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of forty years before the introduction of the British Government, and then in the authorized possession of a son, or male heir of the body of a son, of the original grantee, are to be continued for one succession further than that of the person who was incumbent at the introduction of the British Government, that is, until the death of his last surviving son.

Authorised possession how proved.

Provision 1st.—The authorized possession contemplated by rules 3 and 4 does not involve the necessity of proving any specific authority from, or recognition by, the Government or paramount Power. The mere entry of the holding, as continued in the genuine accounts of the district-officers (even in those not audited and passed by the Government of the time being), will be sufficient to bring it under the heads of "uninterrupted" and "authorized" so far as regards the purposes of this rule: Provided only that there are no entries in the collectorate-accounts which show that the holding of such lands exempt as aforesaid must have been unauthorized by the Government or paramount Power.

Prescriptive right of claimant when admissible.

Provision 2nd.—If there be not evidence forthcoming to disprove a claimant's assertion that his holding has been undisputedly enjoyed for the number of years and descents requisite to fulfil the conditions of rules 3 and 4 respectively, his prescriptive right shall be admitted.

Introduction of British Government when to date—in territories late of Peshwa,

Provision 3rd.—The introduction of the British Government is to be reckoned from the time the East India Company became the Government or paramount authority over each district as regards its ináms. In the territories ceded by or conquered from the Peshwa, therefore, whether khalsat mahál or saranjáms, etc., held exclusive of ináms, etc., the introduction of the British Government will date from the close of that of the Peshwa.

in independent principality or

But in case of the lapse of an independent principality, or of a jágír more ancient than the Peshwa's government, and over the ináms of which he did

not claim any authority, the introduction of the British Government should be reckoned only from the date at which the general management of the districts may have come into the hands of the Company ;

jágír more ancient than Peshwa's government.

and in case any question shall arise as to the precise date when the East India Company became the Government over any district, or when the general management of any district came into their hands, such question shall be referred to and determined by Government in the manner prescribed by provision 1st, rule 1.

Disposal of question as to date of East India Company acquiring Government.

[1] **6.** Land held as wholly exempt from payment of revenue, or on partial assessment, the possession of which is not continuable under the preceding rules, is to be resumed on the demise of the incumbent.

Land resumable on demise of incumbent.

Provision 1st.—In case the incumbent at the time of the introduction of the British Government may have died, the permission to hold for life is to be extended to the person in whose name the land may be continued, when the investigation is commenced, if there be no fraud apparent, nor other reason for withholding this indulgence:

Extension of life tenure of holding of which incumbent died before British rule.

Provision 2nd.—When land is evidently held by fraud recently committed (as when an inám which was resumed under the late Government has been re-occupied under the present Government without authority, or as when a pretended inám is found to have originated since the introduction of this Government with the connivance of district or village-officers), it shall be at once resumed, not being continuable under this or any of the preceding rules.

Resumption of land held by fraud.

7. All lands held for the support of mosques, temples or similar institutions, of the permanent character of which there can be no doubt, are to be continued permanently, even though their permanent continuance may not have been expressly provided for when they were granted.

Continuance of holdings for support of mosques, temples, etc.

Provisions 1st, 2nd and 3rd.—The same as the corresponding provisions of rule 2 of this Schedule in those cases in which title-deeds or other records proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Corresponding provisions of rule 2 applied.

Provision 4th.—When there is no proof forthcoming to show whether or not an inám, coming under the provisions of this rule, was granted, or even specifically recognized, by a competent authority, still, if it has been undisputedly enjoyed for a period of forty years before the introduction of the present Government, it shall be permanently continued, and enjoyment proved by the mere entry of the inám, as continued in genuine accounts of the district-officers (even in those not passed by the Government of the time

Effect of enjoyment for forty years where no proof of grant forthcoming.

[1] There is no rule numbered 5.

being), is to be considered sufficiently "uninterrupted" to give an inám the benefit of this provision, if there be no entries in the Government accounts which show that it must have been unauthorized by them.

Prescriptive title when admissible where records do not go back enough to test enjoyment for forty years.

Provision 5th.—If the forthcoming records do not go far enough back to test the existence of enjoyment of the duration contemplated in provision 4th as establishing full prescriptive title in such ináms, still, if so far as they do go, they are not opposed to the claimant's assertion that sufficient enjoyment has taken place, the prescriptive title of the inám shall be admitted according to his assertions, unless there be other evidence forthcoming to disprove them.

Rule where not applicable.

Provision 6th.—The peculiar advantages of this rule shall not apply to the holdings of individuals in their own names for the performance of ceremonial worship, claims to which must be decided under the rules for personal claims.

Adjudication of certain claims coming under rule.

Provision 7th.—When claims of the denomination coming under this rule are found to be unsupported by proof of original valid title and are proved void of sufficient prescriptive enjoyment, they are to be adjudicated according to rule 6.

Continuance of holdings by official tenure meant to be hereditary.

8. All lands authorizedly held by an official tenure which it is evident from local usage was meant to be hereditary, and has been so considered heretofore even though there be no sanads declaring it to be so,—for instance, ináms which form the authorized emoluments of any hereditary office, as of kázis, village joshis, etc., and are not merely personal,—are to be continued permanently.

Corresponding provision of rule 2 applied.

Provisions 1st, 2nd and 3rd.—The same as the corresponding provisions of rule 2 of this Schedule in those cases in which title-deeds or other records, proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Continuance of inám enjoyed as official holding during period covered by evidence though grant or recognition not proved.

Provision 4th.—When there is no proof forthcoming to show whether or not an inám, coming under the provisions of this rule, was granted or even specifically recognised by competent authority, still, if it has been undisputedly enjoyed as an official, and not merely personal, holding from the earliest period to which the forthcoming evidence does relate, it shall be continued permanently as official emolument, unless the claimant's own statement renders this course improper.

Exemption from rule of emoluments for certain

Provision 5th.—The provisions of this rule are not in any way to apply to emoluments continued for service performed to the State, as the service watans of desáis, sardesáis, nádgaudas, deshpándes, patels, kulkarnís, máhárs,

talaváras, whose claims are to be disposed of according to the rules which are or may be established for the regulation of such holdings. services to State.

Provision 6th.—It is to be understood that mere length of enjoyment of land as inám by an official person is not of itself sufficient to entitle a claim to be brought under this rule. Length of enjoyment by itself does not entitle to benefit of rule.

Provision 7th.—If a holding claimed under this rule be found incapable of permanent continuance under it, the claimant shall be allowed the advantages of any of the preceding rules of this Schedule which may be applicable to his case. Benefit of preceding rules when allowable.

9. On the resumption of any lands under the rules of this Schedule, a moiety or other portion may be continued to the widows of the last incumbents during their lives, in cases of proved poverty and destitution. Provision for widows of last incumbents of resumed holdings.

Provision 1st.—In the case of a holding which is recognizable as an hereditary personal inám, the widow of a proprietor who dies without surviving male issue, or other heirs to whom his inám will of necessity descend, is by right his sole heir, and during her life the inám cannot be regarded as having lapsed to Government: it should, therefore, in such a case, be continued undiminished during the widow's life. Continuance to widow and sole heir of holder of hereditary personal inám.

10. These rules shall not be necessarily applicable to jágírs, saranjáms or other tenures for service to Government, or tenures of a political nature, the titles and continuance of which shall be determined as heretofore under such rules as Government may find it necessary to issue from time to time. Exception of certain tenures from application of rules.

11. Any of these rules may be relaxed in favour of claimants under instructions from the Governor of Bombay in Council, in whom shall also be vested the power of interpreting the precise meaning of any of the rules respecting which a question may arise. Modification in favour of claimants and interpretation of rules.

ACT No. XI OF 1853.[1]

[THE SHORE NUISANCES (BOMBAY AND KOLABA) ACT, 1853.]

[*15th July, 1853.*]

An Act to facilitate the removal of nuisances and encroachments below high-water mark in the Islands of Bombay and Kolába.

WHEREAS there is a large sea-shore in the islands of Bombay and Kolába, and it is expedient, with a view to the safe navigation of the harbour of Preamble.

[1] This Act, so far as it relates to the removal of any obstruction, impediment or public nuisance affecting, or likely to affect the navigation of the port of Bombay, was repealed by Act 22 of 1855.

The short title was given by Bom Act 2 of 1921, Vol. V of this Code.

Bombay, and to the public interests generally, to facilitate the removal of nuisances, obstructions and encroachments below high-water mark in the said harbour, or upon or about the shores of the said islands; It is enacted as follows :—

Power to give notice to remove nuisance.

Mode of giving notice.

Contents.

Form.

1. It shall be lawful for the Collector of Land-revenue at Bombay to give notice requiring the removal of any nuisance, obstruction or encroachment anywhere below high-water mark in the said harbour of Bombay, or upon or about the shores of the said islands; such notice shall be given by affixing the same in some conspicuous place on or near to the encroachment, obstruction or nuisance complained of, and by publication thereof in the *Bombay Government Gazette*, and shall state that, unless the nuisance, obstruction or encroachment be removed or abated within one month, the same will be removed or abated by the said Collector; such notice may be in the Form No. 1, in the schedule to this Act annexed, or to the like effect.

Petition by person denying right to remove nuisance.

Procedure thereupon.

2. If any person shall deny the right of the said Collector to effect such abatement or removal, he shall, within one month after such notice shall have been given as aforesaid, apply to the Supreme Court of Judicature at Bombay by petition, setting forth the grounds of his alleged right and praying that the said Collector may be restrained from causing such abatement or removal; and the said Court may thereupon (on the petitioner's giving sufficient security for costs), fix a time for hearing and adjudicating upon such petition, and give such directions and make such orders as the said Court may think just, and the said Court may also make an order for restraining the alleged nuisance, obstruction or encroachment from being extended, or from being abated or removed by the said Collector, until after adjudication upon the said petition, or the dismissal thereof for want of prosecution.

Onus of proving right.

3. Upon the hearing of every such petition, the onus of proving the alleged right shall be on the petitioner.

Limitation of time for petition.

4. No person shall be allowed, after the expiration of such period of one month, to present any such petition as aforesaid, unless on satisfactorily accounting to the said Court for the delay.

When Collector may cause removal of nuisance.

Form of warrant.

5. If no such petition shall be presented within the said period of one month, or if the same be presented and determined against the right of the petitioner, or be dismissed for want of prosecution, it shall be lawful for the Collector to cause such abatement or removal as aforesaid by any person or persons to be authorized by warrant under his hand, and such warrant may be in the form No. 2 in the schedule to this Act annexed, or to the like effect;

and the said Collector, and any person acting under his warrant, shall not be answerable for any damage unavoidably occasioned in the removal of any such nuisance, obstruction or encroachment. Indemnity.

6. The said Collector may sell the materials of any encroachment or obstruction removed under this Act, and may apply the proceeds of sale in or towards payment of the expenses of the removal, and, if any surplus shall remain, the same shall be forfeited, and be paid and applied in such manner as the Governor of Bombay in Council shall direct. Power to sell materials of encroachment.

7. Nothing in this Act shall prejudice or affect the rights of [1] * * * * * the Crown in any part of the said harbour, or of the sea-shore of the said islands, or preclude or interfere with any such proceedings, civil or criminal, for abating such nuisances and encroachments as aforesaid, as might have been had if this Act had not been passed. Saving of rights of Crown.

8. The words "high-water mark" in this Act shall mean the ordinary line of high-water at monsoon tides. "High-water mark" defined.

SCHEDULE.

Form No. 1.

Notice is hereby given by the Collector of Land-revenue in Bombay, under Act No. XI of 1853, that (*describe the encroachment*) is to be removed or abated within one month from the date hereof; otherwise the same will be removed or abated by the said Collector under the authority of the said Act.

Dated the day of in the year of our Lord

(*Signature of Collector.*)

Form No. 2.

This warrant, granted by the Collector of Land-revenue in Bombay, under Act No. XI of 1853, is to authorize of to remove (*describe encroachment*).

(*Signature of Collector.*)

Dated

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[1] The words "the East-India Company as trustees for", were repealed by the Repealing Act, 1870 (14 of 1870).

THE TOBACCO DUTY (TOWN OF BOMBAY) ACT, 1857.[1]

CONTENTS.

PREAMBLE.

SECTIONS.

1. [*Repealed.*]
2. Municipal duty on tobacco for consumption in Bombay.
3. Municipal duty when payable.
4. Duty not paid on importation to be paid on removal from warehouse for consumption.
   Remission of duty on re-exportation.
5. Bombay a warehousing port for tobacco.
6. Powers for collecting and enforcing payment of duty.
7. Tobacco not to be imported otherwise than by sea.
   Landing places to be prescribed.
8. Exemption from duty.
9. Permit necessary for removal of tobacco.
   Proviso.
10. No permit for removal from warehouse of less than a bale.
    Proviso.
11. License for retail sale of tobacco.
12. What to be deemed retail sale.
13. Retail sale to be only at place mentioned in license.
    Name and number to be affixed to shop.
14. Monthly returns of stock to be made by retail-dealers.
15. Retail-dealers to enter in book weight, etc., of tobacco received.
    Inspection of book.
16. Search-warrant.
17. Power to arrest and detain ; to search vehicles, etc.
18. Confiscation of tobacco illegally imported, removed, etc.
    Mitigation of penalty.
    Enforcement of fine.
19. Penalty for illegal importation, removal, sale or possession.
    Revocation of license.
20. Levy of fines, and adjudication and sale of confiscations.
21. Interpretation-clause.

SCHEDULE A.—FORM OF PERMIT.

[1] This short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

ACT No. IV OF 1857.

[THE TOBACCO DUTY (TOWN OF BOMBAY) ACT, 1857.]

[*9th February, 1857.*]

An Act to amend the law relating to the duties payable on tobacco and the retail sale and warehousing thereof in the Town of Bombay.

WHEREAS it is expedient to amend the law relating to the duties payable on tobacco and the retail sale and warehousing of that article in the town of Bombay; It is hereby enacted as follows: Preamble.

1. [*Repeal of enactments.*] *Rep. Act XIV of 1870.*

2. All tobacco (except such small quantities as are hereinafter mentioned) imported from any place into the town of Bombay and intended for consumption therein shall be liable to a duty of seven rupees and eight annas per maund of forty seers of eighty tolas to the seer, which duty is hereinafter called the municipal duty [1]* * * * *. Municipal duty on tobacco for consumption in Bombay.

3. The said municipal duty may be paid, at the option of the importer, either on the importation of the tobacco or after it has been warehoused as hereinafter provided. Municipal duty when payable.

4. If the said municipal duty is not paid on importation, the tobacco shall be warehoused in a public or licensed warehouse [2]* * * * * *; and the importer shall pay such duty on the said tobacco on its removal from the warehouse for consumption in the said town. Duty not paid on importation to be paid on removal from warehouse for consumption.

When tobacco so warehoused is re-exported to any place beyond the limits of the said town, the whole of the said municipal duty shall be remitted. Remission of duty on re-exportation.

5. The port of Bombay shall [3]* * * * be held to be a warehousing port [4]* * * * * so far as regards the warehousing of tobacco [5]* * * * * * *. Bombay a warehousing port for tobacco.

6. The Commissioner of Customs, Salt and Opium, and officers of customs shall have all the same powers and authorities for collecting and enforcing Powers for collecting and enforcing payment of duty.

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[1] The words "and such duty shall be leviable in addition to any customs-duty prescribed by law" were repealed by the Repealing and Amending Act, 1891 (12 of 1891), General Acts, Vol. IV.

[2] The words and figures "within the meaning of Act XXV of 1836" were repealed by the Repealing Act, 1874 (16 of 1874).

[3] The words "after the passing of this Act," were repealed by the Repealing Act, 1876 (12 of 1876).

[4] The words and figures "within the meaning of Act XXV of 1836" were repealed by the Repealing Act, 1870 (14 of 1870).

[5] The words "and the provisions of the said Act, so far as the same are applicable, shall be applied to the warehousing of tobacco in the said town. The import-duty in the said Act mentioned shall, as to tobacco, include the municipal duty leviable under this Act" were repealed by Acts 12 of 1876 and 12 of 1891.

payment of the said municipal duty, in addition to the powers and authorities specified in this Act, as they now have or shall have in respect of duties of customs.

Tobacco not to be imported otherwise than by sea. Landing-places to be prescribed.

7. It shall not be lawful, without the permission of the Commissioner of Customs, Salt and Opium, or other officer empowered by Government to grant such permission, to bring any tobacco or any preparation thereof into Bombay otherwise than by sea, nor to land the same at any other landing-places than such as may from time to time be prescribed by the Government of Bombay.

Exemption from duty.

8. The foregoing provisions of this Act shall not be applicable to such small quantities of tobacco (not exceeding in weight four seers of eighty tolas to the seer) as are intended for the private consumption of the importer.

Permit necessary for removal of tobacco.

9. It shall not be lawful to remove any tobacco from one place to another within the said town, nor to carry or convey the same on any thoroughfare in the said town nor to carry the same in any vessel or boat of less than forty khandís burthen in any of the creeks or waters adjacent to the said town, without a permit from the Commissioner of Customs, Salt and Opium, which permit shall be in the form of Schedule A to this Act annexed, or to the like effect :

any such permit shall be in force only between sunrise and sunset of the day for which it is granted :

Proviso.

Provided always, that it shall be lawful to convey without a permit any tobacco so far as may be necessary for the lawful importation thereof according to the provisions of this Act, and also small quantities of tobacco, not exceeding in weight four seers of eighty tolas to the seer, for personal or domestic use.

No permit for removal from warehouse of less than a bale.

10. No permit shall be granted for the removal from warehouse of any quantity of tobacco less than an entire bale or package :

Proviso.

Provided that, when tobacco is to be removed for consumption in the said town, the Commissioner of Customs, Salt and Opium, may give permission to open any bale or package previous to removal, and to set aside such portion thereof as may be refuse or waste ; and the said refuse or waste may be re-exported, under the rules for the re-export of tobacco, at any time within one month from the date of such permission, or, if it be not so re-exported, may be destroyed by order of the Commissioner.

11. It shall not be lawful for any person to sell or offer for sale by retail any tobacco in the said town without a license from the Commissioner of Customs, Salt and Opium, or other officer duly empowered by Government in that behalf, which license shall be in force for a period of twelve calendar months from the date thereof unless the person to whom the license is granted shall be deprived thereof under the provisions of this Act.

License for retail sale of tobacco.

A fee of one rupee shall be paid for every such license.

12. Any sale of tobacco not exceeding in weight fourteen seers of eighty tolas to the seer shall be deemed to be a retail sale within the meaning of this Act.

What to be deemed retail sale.

13. It shall not be lawful for any licensed retail dealer in tobacco to carry on the retail sale of the same, or to keep any store of the same, except at such shop or other premises as may be specified in his license; and the name of every retail dealer in tobacco, together with the number of his license, shall be written or painted in English, Gujrati and Marathi, in plain and legible characters of not less than one inch in height, on a board to be affixed in a conspicuous manner in the front of the shop or premises where such retail sale is carried on.

Retail sale to be only at place mentioned in license.

Name and number to be affixed to shop.

14. Every retail dealer in tobacco shall, on or before the tenth day of each month, make to the Commissioner of Customs, Salt and Opium, or other officer as aforesaid a separate return for each shop or place of sale for which he holds a license, showing the quantity of tobacco on hand therein at the beginning of the preceding month, the quantity received during such month, and the persons from whom, and the dates on which, he received it, and the stock remaining at the close of such month;

Monthly returns of stock to be made by retail dealers.

and any retail dealer who refuses or neglects to make such return or makes a false return shall be liable to be deprived of his license by the said Commissioner or other officer as aforesaid, and to pay a fine not exceeding two hundred rupees.

15. Every retail dealer in tobacco shall, on the same day on which he shall receive any tobacco, into any such shop or place of sale, enter in a book to be kept for that purpose the weight of such tobacco, the day on which he receives the same, and the name of the person from whom, and the place from which, he receives it;

Retail dealer to enter in book weight, etc., of tobacco received.

and such book shall be open to the inspection of the Commissioner of Customs, Salt and Opium, or other officer as aforesaid, or of any person authorized by the Commissioner or such officer to inspect the same;

Inspection of book.

and the Commissioner or other officer or person as aforesaid inspecting the said book may make any minute therein, or any extract therefrom, which he shall think fit;

and any retail dealer who neglects or refuses to comply with the provisions of this section shall for every offence be liable to be deprived of his license by the said Commissioner or other officer as aforesaid, and to pay a fine not exceeding two hundred rupees.

Search-warrant.

16. The Commissioner of Customs, Salt and Opium, or other officer as aforesaid, may issue a warrant under his hand and seal to any public officer, commanding him

to enter and search between sunrise and sunset any building or place to be specified in the warrant in which tobacco may be deposited under the provisions of this Act, or in which the Commissioner or other officer as aforesaid has been credibly informed, which information shall be taken down in writing, that tobacco is deposited contrary to the provisions of this Act, and

to seize and to take away from thence any tobacco or other articles subject to confiscation under this Act.

Power to arrest and detain; to search vehicles, etc.

17. The Commissioner of Customs, Salt and Opium, or other officer as aforesaid, or any public officer authorised by the Commissioner or such officer may arrest and detain any person carrying or having charge of any tobacco liable to confiscation under this Act, and may detain and search any vessel or package, and any boat or vehicle, containing or conveying, or supposed to contain or convey, any such tobacco.

Confiscation of tobacco illegally imported, removed, etc.

18. All tobacco imported into the said town or removed from one place to another or kept within the said town, or found in the possession of any person in the said town selling or offering any portion thereof for sale contrary to the provisions of this Act, and

every vessel in which such tobacco is contained, and

every vehicle, boat or animal employed with the consent and knowledge of the owner or his servant in conveying the same,

shall be liable to confiscation:

Mitigation of penalty.

Provided always that it shall be lawful for the adjudicating officer to mitigate the penalty of confiscation herein provided, by commuting the same to the payment of any fine not exceeding the value of the goods liable to confiscation; and every such fine may be enforced, if necessary, by the sale of the goods liable to confiscation.

Enforcement of fine.

Penalty for illegal importation,

19. Any person who shall illegally import, remove or sell in the said town any tobacco, or who shall knowingly have in his possession any tobacco

subject to confiscation under this Act, shall be liable to a fine not exceeding ten times the value of such tobacco ; and, if the offender is a licensed retail dealer, he shall be liable to be deprived of his license by the Commissioner of Customs, Salt and Opium, or other officer as aforesaid.

removal, sale or possession. Revocation of license.

20. All confiscations and fines under this Act may be adjudicated and levied by any Magistrate of Police for the town of Bombay.

Levy of fines and adjudication and sale of confiscations.

Goods adjudged liable to confiscation shall be sold under warrant of the Magistrate.

21. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the context repugnant to such construction :—

Interpretation clause.

the words "town of Bombay" shall include all places within the Islands of Bombay and Kolāba ;

words importing the singular number shall include the plural number and words importing the plural number shall include the singular number ;

words importing the masculine gender shall include females.

SCHEDULE A.

Form of Permit.[1]

No.

A. B. has been permitted to remove from (*Custom-house, or licensed warehouse, or shop No. situated in Kālbādevi Street, to warehouse or shop No. in Bazar Street*) the under-mentioned quantity of tobacco between sunrise and sunset on the day of in the year .

(Signed)

Commissioner of Customs, Salt and Opium.

THE BOMBAY UNIVERSITY ACT, 1857.

CONTENTS.

Preamble.
Sections.
1. Incorporation.
2. Power to hold and dispose of property.

---

[1] *See* s. 9, *supra*.

SECTIONS.

3. Office vacated by leaving India.

4. Chancellor.

5. Vice-Chancellor.

6. [*Repealed.*]

7. Appointment of Fellow may be cancelled.

8. Chancellor, Vice-Chancellor and Fellows to superintend affairs of the University.

9—14. [*Repealed.*]

15. Fees.

Annual accounts.

ACT No. XXII OF 1857.

[THE BOMBAY UNIVERSITY ACT, 1857.] [1]

[*18th July, 1857.*]

An Act to establish and incorporate an University at Bombay.

Preamble.

WHEREAS, for the better encouragement of Her Majesty's subjects of all classes and denominations within the Presidency of Bombay and other parts of India in the pursuit of a regular and liberal course of education, it has been determined to establish an University at Bombay for the purpose of ascertaining, by means of examination, the persons who have acquired proficiency in different branches of Literature, Science and Art, and of rewarding them by Academical Degrees as evidence of their respective attainments, and marks of honour proportioned thereunto; and whereas, for effectuating the purposes aforesaid, it is expedient that such University should be incorporated;

It is enacted as follows [2] * * * *:—

Incorporation.

1. The following persons, namely:—

The Right Honourable JOHN, LORD ELPHINSTONE,
Governor of Bombay;
The Honourable Sir WILLIAM YARDLEY, Knight,
Chief Justice of the Supreme Court of Judicature at Bombay;

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[1] This short title was given by Act 14 of 1897, Genl. Acts, Vol. IV.

The Act is supplemented by Act 8 of 1904, *infra*.

[2] The words "(that is to say)" were repealed by the Repealing Act, 1876 (12 of 1876).

The Right Reverend JOHN HARDING,
Doctor of Divinity, Bishop of Bombay, *ex officio*;
The Honourable Sir HENRY SOMERSET, Lieutenant-General,
Knight Companion of the Most Honourable Order of the Bath,
Commander-in-Chief of the Forces in Bombay, *ex officio*;
The Honourable JAMES GRANT LUMSDEN,
Member of the Council of Bombay, *ex officio*;
The Honourable ARTHUR MALET,
Member of the Council of Bombay, *ex officio*;
EDWARD IRVINE HOWARD, Esquire,
Director of Public Instruction, *ex officio*;
ROBERT HAINES, Esquire, M.D.,
Acting Educational Inspector, Presidency Division, *ex officio*;
C. MOREHEAD, Esquire, M.D.,
Principal of the Grant Medical College, *ex officio*;
JOHN HARKNESS, Esquire, L.L.D.,
Principal of the Elphinstone College, *ex officio*;
The Reverend JAMES McDOUGALL,
Acting Principal of the Poona College, *ex officio*;
PHILIP WILLIAM LEGEYT, Esquire,
Member of the Legislative Council of India;
The Honourable Sir MATTHEW RICHARD SAUSSE, Knight,
Puisne Judge of the Supreme Court of Judicature at Bombay;
Sir JAMSETJEE JEEJEEBHOY, Knight;
METCALFE LARKEN, Esquire,
Judge of the Sudder Court in Bombay, and President
of the late Board of Education;
JUGGONAUTH SUNKERSETT, Esquire,
Member of the late Board of Education;
BOMANJEE HORMUSJEE, Esquire,
Member of the late Board of Education;
BHAO DAJEE, Esquire,
Graduate of the Grant Medical College,
Member of the late Board of Education;

MATTHEW STOVELL, Esquire,
Surgeon in the Bombay Army,
Secretary to the late Board of Education;
CLAUDIUS JAMES ERSKINE, Esquire,
Civil Service, late Director of Public Instruction;
WILLIAM EDWARD FRERE, Esquire,
Member of the Royal Asiatic Society, and
President of the Bombay Branch of the Royal Asiatic Society,
Judge of the Sadr Court in Bombay;
Major-General CHARLES WADDINGTON,
Companion of the Most Honourable Order of the Bath,
Chief Engineer of Public Works;
The Reverend JOHN WILSON,
Doctor of Divinity, Fellow of the Royal Society,
Honorary President of the Bombay Branch of the Royal Asiatic Society;
The Reverend PHILIP ANDERSON, Master of Arts,
Chaplain on the Bombay Establishment;
HENRY BARTLE EDWARD FRERE, Esquire,
Commissioner in Sindh;
Lieutenant EDWARD FREDERICK TIERNEY FERGUSSON, Indian Navy;
MAHOMED YUSOOF MOORGAY, Kazi of Bombay;
JAMES JOHN BARKLEY, Esquire,
Fellow of the Geographical Society, M.I.C.E.,
President of the Bombay Mechanics' Institution, and
Chief Resident Engineer of the Great Indian Peninsular Railway Company;
HENRY LACON ANDERSON, Esquire,
Secretary to Government;

being the first Chancellor, Vice-Chancellor, and Fellows of the said University, and all the persons who may hereafter become or be appointed to be Chancellor, Vice-Chancellor or Fellows as hereinafter mentioned, so long as they shall continue to be such Chancellor, Vice-Chancellor or Fellows, are hereby constituted and declared to be one Body Politic and Corporate by the name of the University of Bombay; and such Body Politic shall by such name have perpetual succession, and shall have a common seal, and by such name shall sue and be sued, implead and be impleaded, and answer and be answered

unto, in every Court of Justice within the territories [1] * * * * under the Government of [1] * * * India [1] * *.

Power to hold and dispose of property.

2. The [2] * Body Corporate shall be able and capable in law to take, purchase and hold any property, moveable or immoveable, which may become vested in it for the purposes of the [2] * University by virtue of any purchase, grant, testamentary disposition or otherwise; and shall be able and capable in law to grant, demise, alien or otherwise dispose of all or any of the property, moveable or immoveable, belonging to the [2] * University; and also to do all other matters incidental or appertaining to a Body Corporate.

Office vacated by leaving India.

3. [3] * * * * * If any person, being Chancellor, Vice-Chancellor or Fellow of the said University, shall leave India without the intention of returning thereto, his office shall thereupon become vacant.

Chancellor.

4. The Governor of Bombay for the time being shall be the Chancellor of the said University [4] * * * * * *.

Vice-Chancellor.

5. [4] * * * * * * The office of Vice-Chancellor shall be held for two years only [4] * * * * *. Whenever a vacancy shall occur in the office of Vice-Chancellor of the said University by death, resignation, departure from India, effluxion of time or otherwise, the Governor of Bombay in Council shall, by notification in the Bombay Gazette, nominate a fit and proper person, being one of the Fellows of the said University, to be Vice-Chancellor in the room of the person occasioning such vacancy: Provided that, on any vacancy in the said office which shall occur by effluxion of time, the Governor of Bombay in Council shall have power to re-appoint [4] * * * * any future Vice-Chancellor to such office.

6. [*Fellows.*] *Rep. Act VIII of 1904.*

Appointment of Fellow may be cancelled.

7. The Governor of Bombay in Council may cancel the appointment of any person already appointed or hereafter to be appointed a Fellow of the University; and, as soon as such order is notified in the Gazette, the person so appointed shall cease to be a Fellow.

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[1] The words "in the position and" "the East", and "Company" were repealed by the Repealing and Amending Act, 1891 (12 of 1891), General Acts, Vol. IV.

[2] The word "said" was repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), *infra.*

[3] The words "The said Body Corporate shall consist of one Chancellor, one Vice-Chancellor and such number of *ex-officio* and other Fellows as the Governor of Bombay in Council hath already appointed, or shall from time to time by any order published in the Bombay Gazette hereafter appoint; and the Chancellor, Vice-Chancellor and Fellows for the time being shall constitute the Senate of the said University: Provided that" were repealed by the Indian Universities Act, 1904 (8 of 1904), *infra.*

[4] The words "and the first Chancellor shall be the Right Hon'ble John, Lord Elphinstone"; and the words "the first Vice-Chancellor of the said University shall be Sir William Yardley, Knight"; and the words and figures "and the Vice-Chancellor hereinbefore nominated shall go out of office on the first day of January, 1859"; and the words "the Vice-Chancellor hereinbefore nominated or" in ss. 4 and 5 respectively were repealed by the Repealing Act, 1876 (12 of 1876).

Chancellor, Vice-Chancellor and Fellows to superintend affairs of the University.

8. The Chancellor, Vice-Chancellor and Fellows for the time being shall have the entire management of and superintendence over the affairs, concerns and property of the said University; and, in all cases unprovided for by this Act, it shall be lawful for the Chancellor, Vice-Chancellor and Fellows to act in such manner as shall appear to them best calculated to promote the purposes intended by the said University.

[1] * * * * * * * *

9. *Meetings of Senate.*
10. *Appointment and removal of Examiners and Officers.*
11. *Power to confer degrees.*
12. *Qualification for admission of candidates for degrees.*
13. *Examination for degrees.*
14. *Grant of degrees.*
} *Rep. Act VIII of 1904.*

Fees.

15. The said Chancellor, Vice-Chancellor and Fellows shall have power to charge such reasonable fees for the degrees to be conferred by them, and upon admission into the said University, and for continuance therein, as they, with the approbation of the Governor of Bombay in Council, shall from time to time see fit to impose. Such fees shall be carried to one General Fee Fund for the payment of expenses of the said University, under the directions and regulations of the Governor of Bombay in Council, to whom the Accounts of income and expenditure of the said University shall once in every year be submitted for such examination and audit as the said Governor of Bombay in Council may direct.

Annual accounts.

THE BOMBAY LAND-CUSTOMS ACT, 1857.

CONTENTS.

PREAMBLE.

SECTIONS.

1 to 3. [*Repealed.*]
4. Customs-stations.
5. Appointment of officers.
6. Government to prescribe roads by which goods may pass.
7. Goods unlawfully passed across frontier after sunset.

[1] The last two paras. of s. 8, relating to "bye-laws", were repealed by s. 29 of the Indian Universities Act, 1904 (8 of 1904), *infra.*

SECTIONS.

8. Written application for permission to pass goods.
9. Misdescription of goods in application.
10. Government to fix value of goods for levying duty.
11. Duty leviable on certain goods according to market-value.
12. Ascertainment of market-value for levy of duty.
13. Exemptions.
14. Certificate of payment of duty.
15. Granting duplicate of lost certificate.
16. Station-officer permitting goods to pass without payment of duty.
17. Vexatious seizure by station-officer.
18. Obstruction of officers.
19. Offering bribes to officers.
20. Adjudication of confiscations, etc.
21. Restoration of forfeited goods.
22. Damages for vexatious seizure.
Penalty in mitigation of confiscation.
Rewards to customs-officers.

ACT No. XXIX OF 1857 [1]

[THE BOMBAY LAND-CUSTOMS ACT, 1857.]

[*11th September, 1857.*]

An Act to make better provision for the collection of land customs on certain foreign frontiers of the Presidency of Bombay.

WHEREAS it is expedient to make better provision for the collection and management of land-customs on certain foreign frontiers of the Presidency of Bombay; It is enacted as follows:— Preamble.

1. [*Repeal of enactments.*] *Rep. Act XIV of 1870.*

2. [*Customs-duties.*] *Rep. Act XIII of 1871.*

3. [*Customs-duties.*] *Rep. Act XI of 1869.*

4. For the levy [2] of duties of customs [3] * * on goods exported by land to, or imported by land from, such foreign territories, customs-stations may be established at such places as may be determined by the Governor in Council. Customs-stations.

[1] This Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), General Acts, Vol. II, to be in force in the Province of Sindh—*see* Notification No. 1254, dated 30th November, 1880, in Gazette of India, 1880, Pt. I, p. 672, and Appendix, p. 312, *infra*.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[2] As to levy of such duties, *see* now s. 5 of the Indian Tariff Act, 1894 (8 of 1894), Genl. Acts, Vol. IV.

The unrepealed provisions of this Act relating to the place of duties and to dutiable goods apply, *mutatis mutandis*, to duties levied and goods liable to duty under or by virtue of s. 5, sub-s. (*1*), cl. (*b*) of the Indian Tariff Act, 1894—*see* s. 8 of Act 8 of 1894, Genl. Acts, Vol. IV.

[3] The words "as above provided" were repealed by the Repealing Act, 1874 (16 of 1874).

Appointment of officers.

5. The Governor in Council may appoint such persons as he may deem fit for the control and supervision of the collection and management of the customs payable under this Act as Commissioners and Deputy Commissioners of Customs, or under such other designation as the said Governor in Council shall determine;

and may appoint all other proper persons to execute the duties of the several subordinate offices necessary to the due management and collection of the said customs [1] * * * * * :

[2] * * * * * * * *

Government to prescribe roads by which goods may pass.

6. The Governor in Council may prescribe, by public notice in the official Gazette, by what roads and passes goods shall be allowed to pass into or out of any such foreign territory as is described in sections 2 and 3 of this Act;

and, after such notice, goods which may be brought to any station established on other roads or passes than those so prescribed shall be detained, and shall be liable to confiscation unless the person in charge thereof shall be able to satisfy the adjudicating officer that his carrying them by that road or pass was from ignorance or accident.

Goods unlawfully passed across frontier after sunset.

7. Goods unlawfully passed, or attempted to be passed unlawfully, across any frontier guarded by stations, between sunset and sunrise, shall be seized and confiscated.

Written application for permission to pass goods.

8. When goods are brought to be passed at any station established for the levy of duties and passing of goods, a written application, according to a form to be prescribed by the Commissioner of Customs, shall be made by the owner or person in charge for permission to pass such goods; and such application shall contain a true description of the goods, with the marks, numbers and description of the packages containing the same, and a declaration of their value.

If any goods shall be passed or attempted to be passed without such an application in writing as is above described, they shall be liable to be seized and confiscated.

Misdescription of goods in application.

9. Goods brought to be passed at any such station shall be liable to confiscation if the packages in which the same may be contained shall on examination be found not to correspond with the description of them given

[1] The words and figures "and the provisions of sections IV, V and VI of the said Act I of 1852 shall be applicable to the persons so appointed" were repealed by the Repealing Act, 1874 (16 of 1874).

[2] The proviso to section 5 was omitted by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

in the application, or if the contents thereof be found not to have been correctly described in regard to sort, quality or quantity, or if, in or among the packages, any goods not stated in the application be found concealed or mixed up with the specified goods.

10. The Governor in Council from time to time, by notice in the official Gazette, may fix a value for any article or number of articles liable to duty under this Act upon their value; and the value so fixed for such articles shall, till altered by a similar notice, be taken to be the value of such articles for the purpose of levying duty on the same under this Act. Government to fix value of goods for levying duty.

11. When goods liable to duty, for which a value has not been fixed by such a notice as is above directed, or for which a fixed duty has not been declared [1] * * * *, are brought to any such station as aforesaid, the duty leviable on such goods shall be levied according to the market-value of such goods. Duty leviable on certain goods according to market-value.

12. If the value of any goods, upon which duty is leviable according to the market-value thereof, shall appear to be under-stated in the declaration of value prescribed in section 8, the officer authorized to receive duties of customs at the station where such goods are brought to be passed shall have power to take the goods, or any part thereof, as purchased for the Government at the price so declared; and, whenever he shall so take goods for the Government, payment thereof shall be made for the same within one month from the date of the declaration, and the officer shall sell the goods so taken on account of Government; Ascertainment of market-value for levy of duty.

and, if they shall realize on sale a sum exceeding all charges incurred on them by Government, a proportion not more than one-half of the excess shall, at the discretion of the Commissioner, be payable to the officer who reported the under-valuation of the goods, who shall in like manner be liable to pay one-half of the net loss that may accrue on the sale of the said goods.

13. No goods [2] * * * * liable to duty shall be exempted from the payment of such duty or of any part thereof except under special order from the [3][Commissioner of Customs] : Exemptions.

Provided always that any officer authorized to receive duties of customs under this Act may, at his discretion, pass free of duty any passenger's

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[1] The words "by the said Schedules" were repealed by the Repealing Act, 1876 (12 of 1876).

[2] The words "entered in either of the said Schedules as" were repealed by the Repealing Act, 1876 (12 of 1876).

[3] These words were substituted for the words "Governor in Council" by section 2 and Schedule II of the Bombay Decentralization Act, 1915 (Bom. Act 3 of 1915), Vol. V of this Code.

personal baggage in actual use ; and if any person shall apply to have goods passed as such baggage, such officer, acting under the orders of [1] [the Commissioner of Customs], shall determine whether they be passenger's personal baggage in actual use, or goods subject to duty under the provisions of this Act.

Certificate of payment of duty.

14. When goods are passed at any such station as aforesaid, the officer authorized to receive duties of customs at such station shall grant a certificate of the payment of such duty or (if the case so require) of the goods having been passed free of duty.

Any officer of customs employed at a station established under this Act may require any person in charge of dutiable goods which have been passed across the frontier to produce the certificate granted for such goods ; and any goods which are unaccompanied by a certificate, or which on examination do not correspond with the specification contained in the certificate produced, shall be detained and shall be liable to confiscation.

Granting duplicate of lost certificate.

15. If a certificate be lost by any person to whom it may have been issued by the officer authorized to issue the same, the Commissioner of Customs, or other officer duly authorized in that behalf, on being satisfied that no fraud has been committed or was intended, may grant a duplicate of such lost document upon payment of a fee of not less than one rupee nor exceeding ten rupees.

The Commissioner or other officer as aforesaid may also authorize any amendment to be made in any application made under this Act, but, if such amendment be required after such application is entered and recorded in the custom-house books, then upon payment of a like fee for any amendment in a document so entered.

Station-officer permitting goods to pass without payment of duty.

16. Any station-officer who shall permit goods liable to duty to pass across the frontier without payment of duty, or who shall release any goods not covered by a sufficient certificate, or who shall permit such goods to pass by any road or pass other than the prescribed roads or passes, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding five hundred rupees, or both.

Vexatious seizure by station-officer.

17. Any station-officer who shall needlessly and vexatiously injure goods under the pretence of examination or in the course of his examination, or who shall wrongfully detain goods for which there is produced a sufficient certificate, shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding five hundred rupees, or both.

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[1] These words were substituted for the word "Government" by section 2 and Schedule II of the Bombay Decentralization Act, 1915 (Bom. Act 3 of 1915), Vol. V of this Code.

18. Whoever intentionally obstructs any officer in the exercise of any powers given by this Act to such officer shall be liable, on conviction before a Magistrate, to imprisonment for any term not exceeding six months, or to a fine not exceeding one thousand rupees, or both. **Obstruction of officers.**

19. Whoever offers a bribe to any officer appointed under this Act, in order to induce such officer to act in a manner inconsistent with his duty, shall be liable for every such offence, on conviction before a Magistrate, to a fine not exceeding one thousand rupees, or to imprisonment for any term not exceeding six months, or both. **Offering bribes to officers.**

20. In all cases in which, under this Act, goods are liable to confiscation, a Commissioner or Deputy Commissioner of Customs appointed under this Act may adjudicate such confiscation, or the same may be adjudged by an Assistant Commissioner of Customs appointed under this Act being a Justice of the Peace: **Adjudication of confiscations, etc.**

Provided that the power to adjudicate confiscation shall not extend as regards an Assistant Commissioner to goods beyond the value of [1][five] hundred rupees; and all cases adjudicated by an Assistant Commissioner shall be liable to revision by a Commissioner or Deputy Commissioner of Customs on appeal.

21. In case any goods shall be seized as liable to confiscation, or detained as under-valued, under this Act, the adjudicating officer may order the same to be restored in such manner and on such terms and conditions as he thinks fit to direct; and, if the owner of the same accept such terms and conditions, he shall not have or maintain any action for recompense or damage on account of such seizure or detention, and the adjudicating officer shall not proceed to condemnation. **Restoration of forfeited goods.**

22. Any officer authorized to adjudicate customs-cases, if he shall decide that a seizure of goods made under the authority of this Act was vexatious and unnecessary, may adjudge damages to be paid to the owner by the officer who made such seizure, besides ordering the immediate release of the goods; and, if the owner accepts such damages, no action shall thereafter lie against such officer in any Court of Justice on account of such seizure; **Damages for vexatious seizure.**

and if such adjudicating officer shall decide that the seizure was warranted, but shall deem that the penalty of confiscation is unduly severe, he may mitigate the same by levying on the goods so seized as aforesaid any portion of the market-value of such goods not less than one-tenth of such value; **Penalty in mitigation of confiscation.**

and, if the said officer adjudges confiscation or any penalty in mitigation of confiscation, he may order that, from the sale of the goods, or from the proceeds of any penalty inflicted in mitigation of confiscation, a proportion not **Rewards to customs-officers.**

[1] This word was substituted for the word "one" by section 2 and Schedule II of the Bombay Decentralization Act, 1915 (Bom. Act 3 of 1915), Vol. V of this Code.

exceeding, in all cases of seizure except seizures of salt or tobacco, one-half of the sum remaining after payment of all Government demands, shall be distributed in rewards amongst such officers as he deems entitled thereto and in such proportion as he directs to each respectively.

In awarding rewards for the seizure of confiscated salt or tobacco, the said officer may award one-half of the proceeds of sale, without making any deduction on account of Government demands.

THE ADEN CIVIL AND CRIMINAL JUSTICE ACT, 1864.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Interpretation.
   Number.
   Gender.

Civil Jurisdiction.

2. Administration of civil justice vested in Court of Resident.
3. Resident may try, in first instance, all cases instituted in Court of Resident.
4. Cases triable by Assistant Residents.
   Distribution of cases.
5. Appeal from Assistant Resident to Resident.
6. Powers of Resident in hearing appeals.
7. Cases in which no appeal from Assistant Resident.
   Power of revision.
8. No appeal from Resident.
   Reference of question of law, etc., to High Court.
9. Resident may pass decree contingent upon opinion of High Court, pending which execution not to issue.
10. Full Bench of High Court to decide cases referred.
11. Parties may appear and be heard in person or by pleader.
12. Decision of High Court how transmitted.
13. Costs of reference to High Court.
14. Resident to have powers of Small Cause Court.
15. Administration of civil justice according to spirit and principles of Bombay Laws and Regulations.

Civil Procedure.

16. Code of Civil Procedure applied.

SECTIONS.

Criminal Jurisdiction.

17. Administration of criminal justice how vested.
18. Governor of Bombay may give Assistant Residents certain powers.
19. Appeal from Assistant Resident to Resident.
20. Exercise by Resident of powers of Court of Session and of Magistrate.
21. As Court of Session, to hold gaol-deliveries.
Powers of Resident as to trial of European British subjects.
Commitments in certain cases ;
in other cases.
22. Commitment and trial of such subjects for offences other than those punishable with death.
22A. Power to appoint Additional Sessions Judge.

Criminal Procedure.

23. Proceedings in criminal cases how regulated.
24. Trial of European or American by Resident to be by jury.
25. List of jurors.
26. Publication of list.
27. Criminal Procedure Code applied to jurors and list.
Military men not exempt.
28. Confirmation of sentence of death.
Power to commute.
29. No appeal from order of Resident.
Power to reserve points for High Court.
30. Review of case by High Court.

General Rules.

31. High Court may frame rules for Resident's Court.

ACT No. II OF 1864.[1]

[THE ADEN CIVIL AND CRIMINAL JUSTICE ACT, 1864.]

[*12th February, 1864.*]

An Act to provide for the administration of Civil and Criminal Justice at Aden [2]

WHEREAS the administration of civil and criminal justice at Aden is now Preamble.

[1] For Statement of Objects and Reasons, *see* Calcutta Gazette, 1863, p. 2353, and for Proceedings in Council, *see ibid*, Supplement, pp. 572 and 573, and Gazette of India, 1864, Supplement, pp. 28 and 41.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

As to extension of this Act to such dependencies of Aden for the time being as are administered by the Governor of Bombay in Council, *see* the Aden Laws Regulation, 1891, *infra*, and as to laws in force and jurisdiction exercised in territories known as the "Aden Protectorate," *see* notification No. 368 E.B., dated the 1st February, 1907, Gazette of India, 1907, Pt. I, p. 74, and Bombay Government Gazette, 1907, Pt. I, p. 367.

[2] As to definition of "Aden", *see* the Aden Laws Regulation, 1891 (2 of 1891), ss. 2 and 3, *infra*.

entrusted to the Resident and in subordination to him to the Assistant Resident [1] * * * * * *;

and whereas the criminal law to be administered at Aden is provided for by the [2] Indian Penal Code, but the law to be administered at Aden in civil matters and the precise nature of the criminal and civil jurisdiction of the Resident, and the proper course of procedure in his Court, have never been defined, and it is expedient that they should be provided for; XLV of 1860.

and whereas at present judgments and proceedings of the Resident at Aden are not subject to the superintendence or revision of any Court of Justice, except so far as they are subject to appeal to Her Majesty in Council, and it is expedient to provide for the superintendence or revision of certain of such judgments and proceedings by the High Court at Bombay;

It is enacted as follows :—

Interpretation.

1. The following words and expressions in this Act shall have the meanings hereby assigned to them unless there be something in the subject or context repugnant thereto, that is to say :—

the word "Resident" denotes the chief civil officer at Aden appointed by the Government, by whatever designation such officer may be called, and includes any Acting Resident or officer acting temporarily as such chief civil officer;

the words "Assistant Resident" denote any officer appointed by the Government to assist the Resident at Aden by whatever designation such officer may be called, and includes an Acting Assistant;

the words "Court of the Resident" include the Court of any Assistant Resident;

Number.

words importing the singular number include the plural number, and words importing the plural number include the singular number;

Gender.

words importing the masculine gender include females.

Civil Jurisdiction.

Administration of civil justice vested in Court of Resident.

2. The administration of civil justice at Aden is hereby declared to be vested in the Court of the Resident.

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[1] The words and figures "and whereas Her Majesty has by Her Letters Patent, dated the 22nd June, 1860, appointed the Resident at Aden to be Judge of Her Majesty's Vice-Admiralty Court at Aden for the purposes of and according to the provisions of the Statute 12 & 13 Vict., c. 84," were repealed by the Colonial Courts of Admiralty (India) Act, 1891 (16 of 1891). The Court of the Resident at Aden is a Colonial Court of Admiralty under s. 2 of that Act, General Acts, Vol. IV.

[2] General Acts, Vol. I.

3. The Resident may hear and determine, in the first instance, all cases instituted in the Court of the Resident, of whatever nature and whatever may be the amount or value of the property in dispute.

Resident may try, in first instance, all cases instituted in Court of Resident.

4. The Assistant Residents shall have power to hear and determine, in the first instance, all cases instituted in the Court of the Resident of whatever nature and whatever may be the amount or value of the property in dispute.

Cases triable by Assistant Residents.

The Resident may from time to time direct in what manner the cases instituted in his Court shall be distributed amongst the Assistant Residents.

Distribution of cases.

5. When any suit which relates to immoveable property, or in which the claim, estimated according to any law for the valuation of claims for the time being in force, shall exceed five hundred rupees in value, is tried in the first instance by an Assistant Resident, an appeal shall lie from his decision to the Resident.

Appeal from Assistant Resident to Resident.

An appeal shall also lie to the Resident from all orders passed by an Assistant Resident in the execution of a decree or other order from which, had the order been passed by a Court subordinate to the Court of a District Judge in the Presidency of Bombay, an appeal would have been allowed to the District Judge, as well as from all orders passed by an Assistant Resident in cases other than suits as defined in the Code of Civil Procedure.[1]

6. For the hearing and determination of appeals from decisions and orders under the last preceding section, the Resident shall (save as herein is otherwise provided) possess and exercise the powers of a District Judge in the Bombay Presidency with reference to the Courts subordinate to him.

Powers of Resident in hearing appeals.

7. No appeal shall lie from the decision of an Assistant Resident in any suit not relating to immoveable property in which the claim estimated as aforesaid shall not exceed five hundred rupees in value; but the Resident may, within the period allowed for appeal in appealable cases, call for any proceedings of the Assistant Resident at any stage thereof, and may pass such orders thereon as he may think fit.

Cases in which no appeal from Assistant Resident.

Power of revision.

8. No appeal shall lie from any decision or order of the Resident given or made by him, whether in the exercise of his original jurisdiction, or in the exercise of his jurisdiction as a Court of appeal or of revision; but if, in the trial of any suit in which the claim estimated as aforesaid shall not exceed one thousand rupees in value, any question of law or of usage having the force of law or of the construction of a document affecting the merits of the decision shall arise, on which the Resident shall entertain doubts, the Resident may, either of his own motion, or on the application of any of the parties to the suit, draw up a statement of the case and submit it, with his own opinion, for the decision of the High Court of Judicature at Bombay;

No appeal from Resident.

Reference of question of law, etc., to High Court.

[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), General Acts, Vol. VI.

and if, in the trial of any suit or the hearing of an appeal in any suit in which the claim, estimated as aforesaid, shall exceed one thousand rupees in value, any question of fact or of law or of usage having the force of law or of the construction of a document affecting the merits of the decision shall arise, the Resident shall, on the application of any of the parties to the suit, or he may of his own motion, draw up a statement of the case and submit it with his own opinion for the decision of the said High Court.

Resident may pass decree contingent upon opinion of High Court, pending which execution not to issue.

9. The Resident may proceed in the case notwithstanding a reference to the High Court, and may pass a decree contingent upon the opinion of the High Court on the point referred; but no execution shall be issued in any case in which a reference shall be made to the High Court, until the receipt of the order of that Court.

Full Bench of High Court to decide cases referred.

10. Cases referred for the opinion of the High Court shall be heard by two or more Judges of that Court. Before giving judgment the High Court may call for and peruse the whole or any part of the proceedings of the Court of the Resident, but shall not be bound so to do.

Parties may appear and be heard in person or by pleader.

11. The parties to the case may appear and be heard in the High Court in person or by a pleader.

Decision of High Court how transmitted.

12. The High Court, when it has heard and considered the case, shall transmit to the Resident a copy of its judgment under the seal of the Court and the signature of the Registrar; and the Resident shall, on the receipt thereof, proceed to dispose of the case conformably to the decision of the High Court.

Cost of reference to High Court.

13. Costs, if any, consequent on the reference of a case for the opinion of the High Court shall be costs in the suit.

Resident to have powers of Small Cause Court.

14. When any suit tried in the first instance by the Resident is of such a nature as to be cognizable under [1]Act XLII of 1860 (*for the establishment of Courts of Small Causes beyond the local limits of the jurisdiction of the Supreme Courts of Judicature established by Royal Charter*), the Resident shall, in such suit, have all the powers conferred on, and shall be guided by all the provisions applicable to, a Court of Small Causes constituted within the Presidency of Bombay under the said Act or any other Act for the time being in force not being an Act relating to Courts of Small Causes in the Presidency towns; and every Assistant Resident who shall have been vested by the Governor of Bombay in Council with the powers of Judge of a Court of Small

[1] See now the Provincial Small Cause Courts Act, 1887 (9 of 1887), Genl. Acts, Volume IV.

Causes as defined in the said [1]Act XLII of 1860 or any Act passed in supersession thereof, shall have the like powers and be guided by the like provisions in any suit tried by him in the first instance and of a nature cognizable under the said [1]Act XLII of 1860, anything in section 5 of this Act contained to the contrary notwithstanding.

Administration of civil justice according to spirit and principles of Bombay Laws and Regulations.

15. In the administration of civil justice, the Court of the Resident shall be guided by the spirit and principles of the Laws and Regulations in force in the Presidency of Bombay, and administered in the Courts of that Presidency not established by Royal Charter, and in the High Court in the exercise of its jurisdiction as a Court of appeal from those Courts.

Civil Procedure.

Code of Civil Procedure applied.

16. Except as otherwise provided in this Act, the proceedings in suits and cases of every description between party and party brought in the Court of the Resident shall be regulated by the [2] Code of Civil Procedure and by any other Act or Acts in relation to civil procedure in force for the time being.

Criminal Jurisdiction.

Administration of criminal justice how vested.

17. The administration of criminal justice at Aden is hereby declared to be vested in the Court of the Resident, save as is herein otherwise provided.

Governor of Bombay may give Assistant Residents certain powers.

18. The Governor of Bombay in Council may invest any Assistant Resident with the powers of a Magistrate, or of [3] *a subordinate Magistrate of the first or second class* as described in the Code of Criminal Procedure, and such Assistant Resident shall exercise such powers under the said Code, but subject to the provisions of this Act.

Appeal from Assistant Resident to Resident.

19. In every case tried by an Assistant Resident in which the punishment awarded shall be imprisonment for a period exceeding six months with or without fine, or shall be only a fine exceeding five hundred rupees, an appeal shall lie from the sentence of the Assistant Resident to the Resident.

No appeal shall lie from the sentence of an Assistant Resident in any case in which the punishment awarded shall be imprisonment for a period not exceeding six months, with or without fine, or shall be only a fine not exceeding five hundred rupees: but the Resident may in all cases, within the period allowed for appeal in appealable cases, call for any proceedings whatever of the Assistant Resident at any stage thereof, and may pass such order thereon as he may think fit.

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[1] *See* now the Provincial Small Cause Courts Act, 1887 (9 of 1887), Genl. Acts, Vol. IV.

[2] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), Genl. Acts, Vol. VI.

[3] Shall be deemed to mean now "a Magistrate of the second class or a Magistrate of the third class"—*see* s. 3 (*2*) of the Criminal Procedure Code, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

Exercise by Resident of powers of Court of Session and of Magistrate.

20. The Resident shall, except as in this Act is otherwise provided, exercise all the powers of a Court of Session as defined in the [1]Code of Criminal Procedure, and he may also, when it shall seem to him proper so to do, exercise the powers of a Magistrate as defined in the said Code, except in cases triable before himself as a Court of Session. X of 1882.

As Court of Session, to hold gaol-deliveries.

21. The Resident in the exercise of his powers as a Court of Session shall hold gaol-deliveries at convenient periods, of which due notice shall be given, for the trial of all persons charged with offences punishable under the [2]Indian Penal Code or under any other law in force for the time being, who may be committed to take their trial before him as a Court of Session: XLV of 1860.

Powers of Resident as to trial of European British subjects. Commitments in certain cases; in other cases.

Provided that the Resident shall not have power to try any European British subject charged with an offence punishable with death under the said Code.

The commitment of any European British subject charged with any such offence shall be made to the High Court at Bombay.

In all other cases the commitments made within the limits of the jurisdiction of the Court of the Resident for offences punishable under the [2]Indian Penal Code shall be made to the Court of the Resident. XLV of 1860.

Commitment and trial of such subjects for offences other than those punishable with death.

22. If any European British subject shall be charged in Aden with any offence (other than an offence punishable with death under the [2]Indian Penal Code), which a Justice of the Peace shall not be competent to punish, and there shall be sufficient grounds for committing him for trial, such European British subject shall be committed to the Court of the Resident, and shall be tried by the Resident. XLV of 1860.

Power to appoint Additional Sessions Judge.

[3][**22A.** (*1*) The Governor of Bombay in Council may appoint any Assistant Resident to be an Additional Sessions Judge.

(*2*) Subject to the provisions of this Act, an Additional Sessions Judge shall exercise the same criminal jurisdiction as is conferred by this Act on the Resident, and the provisions of this Act regarding criminal procedure shall apply to him in the same way and to the same extent as they do to the Resident.

(*3*) An Additional Sessions Judge shall try only such cases and appeals as the Resident by general or special order may direct him to try.

(*4*) Nothing in section 19 of this Act shall apply to cases tried by, or the proceedings of, an Assistant Resident when exercising the powers of a Court of Session.]

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[1] *See* now the Criminal Procedure Code, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

[2] Genl. Acts, Vol. I.

[3] Section 22 A was inserted by s. 2 of the Criminal Justice Aden (Amendment) Act, 1918 (5 of 1918), *infra*.

Criminal Procedure.

23. Save as in this Act otherwise provided, the proceedings in all criminal cases of any description brought in any Court in Aden shall be regulated by the [1]Code of Criminal Procedure. Proceedings in criminal cases how regulated.

X of 1882.

24. Criminal trials before the Resident as a Court of Session, in which a European (whether a British subject or not) or an American is the accused person or one of the accused persons, shall be by jury, and in such case the jury, if such European or American shall desire it, shall consist of at least one-half Europeans or Americans, if such a jury can be procured. Trial of European or American by Resident to be by jury.

25. The Resident shall from time to time prepare and make out in alphabetical order a list of persons residing at Aden who are in the judgment of the Resident qualified from their education and character to serve as jurors. List of jurors.

The list shall contain the names, places of abode and quality or business of every such person, and shall mention the race to which he belongs.

26. Copies of such list shall be stuck up in the Court of the Resident, and every such copy shall have subjoined to it a notice stating that objections to the list will be heard and determined by the Resident at a time and place mentioned in the notice. Publication of list.

27. All the provisions of the [1]Code of Criminal Procedure as to jurors and the list of jurors shall be applied, so far as the same can be applied, respectively, to jurors and the list of jurors under this Act : Criminal Procedure Code applied to jurors and list.

Provided that no person shall be exempt from the liability to serve as a juror on the ground only of his being in the military service : Military men not exempt.

Provided also that the jurors shall be summoned by the Resident.

28. If, on any trial, sentence of death shall be passed by the Resident, such sentence shall not be carried into execution until it shall have been confirmed by the High Court at Bombay. Confirmation of sentence of death.

It shall be lawful for the High Court at Bombay, in any case in which it shall seem proper so to do, to commute a sentence of death to a sentence of transportation for life, or for any shorter period not less than seven years. Power to commute.

29. No appeal shall lie from an order or sentence passed by the Resident in any criminal case. No appeal from order of Resident.

But it shall be at the discretion of the Resident to reserve any point or points of law for the opinion of the said High Court. Power to reserve point for High Court.

[1] *See* now the Criminal Procedure Code, 1898 (Act 5 of 1898), Genl. Acts, Vol. V.

Review of case by High Court.

30. On such point or points of law being so reserved as in the last preceding section mentioned, or on its being certified by the Advocate General at Bombay that in his judgment there is an error in the decision of a point or points of law decided by the Resident, or that a point of law decided by the said Resident should be further considered, the said High Court shall have full power and authority to review the case or such part of it as may be necessary, and finally determine such point of law, and thereupon to pass such judgment and sentence as to the said High Court shall seem right.

General Rules.

High Court may frame rules for Resident's Court.

31. The High Court at Bombay shall have power to make and issue general rules for regulating the practice and proceedings of the Court of the Resident [1][and the Court of the Additional Sessions Judge] and also to frame forms for every proceeding in the [2][said Courts] for which the said High Court shall think it necessary that a form should be provided, for keeping all books, entries and accounts to be kept by the officers, and for the preparation and submission of any statements to be prepared and submitted by the Court of the Resident [1][and the Court of the Additional Sessions Judge] and from time to time to alter any such rule or form : Provided that such rules and forms shall not be inconsistent with the provisions of this Act, or of any other law in force.

ACT No. XXIII of 1866. [3]

[The Bombay High Court (Letters Patent) Act, 1866.]

[*17th May, 1866.*]

An Act to correct two clerical errors in the [4]Letters Patent for the High Court of Judicature for the Presidency of Bombay.

Preamble.

Whereas the twenty-second section of the [4]Letters Patent for the High Court of Judicature for the Presidency of Bombay, dated the 28th December, 1865, is as follows :—"And we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all *such* persons beyond such limits over whom the said High Court of Judicature at *Fort William in Bengal* shall have criminal jurisdiction at the date of the publication of these presents ;"

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[1] These words were inserted by s. 3 of the Criminal Justice, Aden (Amendment) Act, 1918 (5 of 1918), *infra*.

[2] These words were substituted for the words "said Court" by *ibid*.

[3] For Proceedings in Council relating to this Act, which was introduced and passed at one sitting, *see* Gazette of India, 1866, Supplement, p. 255. The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[4] General Statutory Rules and Orders, Vol. I.

And whereas it is expedient to correct the two clerical errors in such section which are hereinbefore indicated by italics;

It is hereby enacted as follows :—

1. In lieu of the said recited section, the following shall be substituted :— "and we do further ordain that the said High Court of Judicature at Bombay shall have ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also in respect of all persons beyond such limits over whom the said High Court of Judicature at Bombay shall have criminal jurisdiction at the date of the publication of these presents."

Clause substituted for section 22 of revised Letters Patent of Bombay High Court.

ACT No. V. OF 1868.[1]

[THE COMMISSIONER IN SINDH (DELEGATION OF POWERS) ACT, 1868.]

[*13th March, 1868.*]

An Act to enable the Governor of Bombay in Council to delegate to the Commissioner in Sindh certain of the powers of a Local Government.

1. It shall be lawful for the Governor of Bombay in Council, by a notification published in the Bombay Government Gazette, to delegate to the Commissioner in Sindh all or any of the powers conferred on the said Governor in Council, as the Local Government of the Province of Sindh, by any of the Bombay Regulations, or by any Act of the Governor General of India in Council solely applicable to the Presidency of Bombay, or by any Act passed heretofore or hereafter by the Governor of Bombay in Council, or by any of the Acts of the Governor General of India in Council mentioned in the schedule to this Act.

Power to delegate to Commissioner in Sindh certain powers of Local Government.

2. It shall be lawful for the Governor of Bombay in Council,[2] * * * * * * * to delegate to the Commissioner in Sindh all or any of the powers heretofore or hereafter

* Power to delegate to Commissioner in Sindh certain powers of Local Government.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1868, p. 214, and for Proceedings in Council, *see ibid*, Supplement, pp. 81, 102, 210 and 219.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[2] The words "with the consent of the Governor General of India in Council" were omitted by s. 2, Schedule I of the Devolution Act, 1920 (38 of 1920).

conferred by an Act of the Governor General of India in Council on the Governor of Bombay in Council as the Local Government of the Province of Sindh.

Validation of acts of Commissioner.

3. All acts done by the Commissioner in Sindh under the authority of any power so delegated shall be as valid as if they had been done by the Governor of Bombay in Council.

SCHEDULE.

* * * * * *[1]

[2] [The Foreign Jurisdiction and Extradition Act, 1879.]

[3] Act XXV of 1861 (for simplifying the procedure of the Courts of Criminal Judicature not established by Royal Charter). XXI of 1879.

[4] Act VI of 1863 (to consolidate and amend the laws relating to the administration of the Department of Sea Customs in India).

[2] Indian Forest Act, 1878. VII of 1878.

THE BOMBAY CIVIL COURTS ACT, 1869.

CONTENTS.

PREAMBLE.

PART I.
PRELIMINARY.

SECTIONS.

1. Short title.
   Extent.
2. [*Repealed.*]

PART II.
DISTRICTS AND SADR STATIONS.

3. Alteration and creation of districts.
4. Position of sadr station.

PART III.
DISTRICT COURTS.

5. District Judges.
6. Situation of District Court.
7. Original jurisdiction of District Court.
8. Appellate jurisdiction of District Court.

[1] The reference to the Towns Improvements Act, 1850 (26 of 1850), was repealed by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[2] Substituted for the references to Act 7 of 1854 and the Government Forests Act of 1865 (7 of 1865) respectively by the Repealing and Amending Act, 1891 (12 of 1891). The Foreign Jurisdiction Act of 1879 is now repealed by the Indian Extradition Act, 1903 (15 of 1903), Genl. Acts, Vol. V. For the Indian Forest Act, 1878 (7 of 1878), *see* Genl. Acts, Vol. II.

[3] *See* now the Criminal Procedure Code, 1898 (5 of 1898), Genl. Acts, Vol. V.

[4] *See* now the Sea Customs Act, 1878 (8 of 1878), Genl. Acts, Vol. II.

SECTIONS.

9. Control and inspection of Courts.
10. Writs and orders.
Reports and returns.
11. Seal of District Judge.

PART IV.

JOINT JUDGES.

12. Power to appoint Joint Judges.
13. Enactments applied to Joint Judge.
Joint Judge's seal.

PART V.

ASSISTANT JUDGES.

14. Power to appoint Assistant Judges.
15. Situation of Assistant Judge's Court.
16. Original jurisdiction of Assistant Judge.
17. Appellate jurisdiction of Assistant Judge.
18. Continuance of Assistant Judge's appellate jurisdiction.
19. Power to invest Assistant Judge with powers of District Judge.
20. Assistant Judge to use seal of District Judge.

PART VI.

SUBORDINATE JUDGES.

21. Number of subordinate Civil Courts.
22. Appointment of Subordinate Judges.
22A. Power to fix local limits of jurisdiction of Subordinate Judges.
23. Situation of subordinate Courts.
Appointment of Joint Subordinate Judges.
Provisions applicable to Joint Subordinate Judges.
24. Classes of Subordinate Judges.
Jurisdiction of Subordinate Judge of first class.
Jurisdiction of Subordinate Judge of second class.
25. Special jurisdiction of Subordinate Judge of first class.
26. Appeals from his decision.
27. Appellate jurisdiction of Subordinate Judge of first class or Judge of Court of Small Causes.
28. Power to invest Subordinate Judges with small cause powers.
28A. Power to invest Subordinate Judges with jurisdiction under certain Acts.
29. Seal of Subordinate Judge.
30-31. [*Repealed.*]
32. Reference of Government suits.

REMOVAL OR SUSPENSION.

SECTIONS.

33. Commission of inquiry into alleged misconduct.
34. Suspension of Subordinate Judges by High Court;
by District Judge.
Saving of power of Government to suspend or dismiss.

PART VII.

TEMPORARY VACANCIES.

35. Temporary vacancy of office of District Judge.
36. Delegation of powers of District Judge.
37. Temporary vacancy of office of Subordinate Judge.

PART VIII.

MINISTERIAL OFFICERS.

38. Appointment, etc., of ministerial officers.
39. Duties of ministerial officers.
40. Power to appoint clerks of the Courts.
40A. Power to transfer clerk of the Court or ministerial officer.

PART IX.

MISCELLANEOUS.

41. Rules for keeping proceedings.
41A. Licensed petition-writers.
42. Fees for process.
43. Sittings of Courts.
Vacation.

THE SCHEDULE [*Repealed.*]

ACT No. XIV OF 1869.[1]

[*19th March, 1869.*]

An Act to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to the district and other subordinate Civil Courts in the Presidency of Bombay; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the Bombay Civil Courts Act, 1869, and

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1869, p. 100; and for Proceedings in Council, *see ibid*, 1869, Supplement, pp. 59, 180, 185, 336, 421 and 461.

extends only to the territories (other than [1] Sindh) under the Government of the Governor of Bombay in Council in which the [2] Code of Civil Procedure is now in force. **Extent.**

But the Governor of Bombay in Council may, by notification in the Government Gazette, extend this Act to any [1] other of the territories under such Government in which the said [2] Code is not in force, or to [1] Sindh.

2. [*Repeal of enactments.*] *Rep. Act XIV of 1870.*

PART II.

DISTRICTS AND SADR STATIONS.

3. The Governor of Bombay in Council may from time to time, by a notification in the Government Gazette, alter [3] the limits of existing zilas (which shall hereafter be called districts) and create new districts for the purposes of this Act. **Alteration and creation of Districts.**

4. The Governor of Bombay in Council may also from time to time, by notification in the Government Gazette, alter the position of the sadr station in any district, and fix the position of the sadr station in any new district. **Position of sadr station.**

PART III.

DISTRICT COURTS.

5. There shall be in each district a District Court presided over by a Judge to be called the District Judge. He shall be appointed by the Governor of Bombay in Council, by whose authority only he shall be liable to be suspended or removed from his appointment. [4] * * * * **District Judges.**

6. The District Judge shall ordinarily hold the District Court at the sadr station in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district. **Situation of District Court.**

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[1] Ss. 3, 4, 9, 10, 12 to 20, 23 to 28, 32, 35 to 37, 40, 41, 41A and 43 of Act 14 of 1869 have been extended, by notifications under the Scheduled Districts Act, 1874 (14 of 1874), Genl. Acts, Vol. II, to the Province of Sindh, *see* Appendix, pp. 316 to 322, *infra*.

The Act has been extended to certain villages ceded and surrendered by the Nizam of Hyderabad and the Chief of Akalkot respectively, *see* Bom. Local Rules and Orders.

[2] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), Genl. Acts, Vol. VI.

[3] In this connection, *see* s. 22-A *infra*.

[4] The words "The present Zila Judges shall be the first District Judges under this Act" were repealed by the Repealing Act, 1876 (12 of 1876).

Original jurisdiction of District Court.

7. The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the [1] Code of Civil Procedure.

Appellate jurisdiction of District Court.

8. Except as provided in sections 16, 17 and 26, the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force.

Control and inspection of Court.

9. The District Judge shall have general control over all the Civil Courts and their establishments within the district, and it shall be his duty to inspect, or to cause one of his assistants to inspect, the proceedings of all the Courts subordinate to him, and to give such directions with respect to matters not provided for by law as he may think necessary.

The District Judge shall also refer to the High Court all such matters as appear to him to require that a rule of that Court should be made thereon.

Writs and orders.

10. The District Judge shall obey all writs, orders or processes issued to him by the High Court, and shall make such returns or reports thereto under his signature and the seal of the Court as the exigencies of the case require.

Reports and returns.

He shall further furnish such reports and returns and copies of proceedings as may be called for by the High Court or the Governor of Bombay in Council.

Seal of District Judge.

11. The District Judge shall use a circular seal, two inches in diameter, which shall bear thereon the Royal Arms, with the following inscription in English and the principal language of the district:—"District Court of ."

PART IV.

JOINT JUDGES.

Power to appoint Joint Judges.

12. The Governor of Bombay in Council may [2] * * * appoint in any district a Joint Judge who shall be invested with co-extensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint Judge by order of the High Court.

[3] * * * * * * *

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[1] *See* now the Code of Civil Procedure, 1908 (Act 5 of 1908), Genl. Acts, Vol. VI.

[2] The words "with the previous sanction of the Governor-General of India in Council" were repealed by section 3 and the 2nd Schedule of the Bombay Repealing and Amending Act, 1910 (Bom. Act 1 of 1910), Vol. V of this Code.

[3] The second clause of section 12 was repealed by *ibid.*

13. All Regulations and Acts now or hereafter in force and applying to a District Judge shall be deemed to apply also to the Joint Judge; and the seal of the Joint Judge shall be the same as is used by the District Judge.

Enactments applied to Joint Judge, Joint Judges seal.

PART V.

ASSISTANT JUDGES.

14. The Governor of Bombay in Council, under the general control of the Governor General of India in Council, may appoint one or more Assistants to the District Judge, and may suspend or remove from his appointment any Assistant so appointed. [1]* * * * *

Power to appoint Assistant Judges.

15. An Assistant Judge shall ordinarily hold his Court at the same place as the District Judge, but he may hold his Court elsewhere within the district, whenever the District Judge shall, with the previous sanction of the High Court, direct him so to do.

Situation of Assistant Judge's Court.

16. The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to ten thousand rupees in amount or value, [2][applications or references under special Acts,] and miscellaneous applications not being of the nature of appeals.

Original jurisdiction of Assistant Judge.

The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications [2][or references].

Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds five thousand rupees.

* * * * * *[3]

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[1] The words "The present Assistant Judges shall be the first Assistant Judges under this Act" were repealed by the Repealing Act, 1876 (12 of 1876).

[2] These words were inserted by s. 2 of the Bombay Civil Courts Amendment Act, 1900 (Bom. Act 1 of 1900), Vol IV of this Code.

[3] The words and figures "The Assistant Judge shall, when directed by the District Judge so to do, also take evidence on applications for certificates under Bombay Regulation 8 of 1827 (*to provide for the formal recognition of heirs, executors and administrators and for the appointment of administrators and managers of property by the Courts*), Act No. XXVII of 1860 (*for facilitating the collection of debts on successions and for the security of parties paying debts to the representatives of deceased persons*)" were repealed by the Succession Certificate Act, 1889 (7 of 1889), Genl. Acts, Vol. IV, and the words and figures "and Act No. XX of 1864 (*for making better provision for the care of the persons and property of minors in the Presidency of Bombay*) and shall forward it with his opinion thereon for the final orders of the District Judge," were repealed by the Guardian and Wards Act, 1890 (8 of 1890), Genl. Acts, Vol. IV.

Appellate jurisdiction of Assistant Judge.

17. The Governor of Bombay in Council may, by notification in the Government Gazette, empower any Assistant Judge to try such appeals from the decrees and orders of the subordinate Courts as would lie to the District Judge and as may be referred by him to the Assistant Judge.

Decrees and orders passed under this section by an Assistant Judge shall have the same force and shall be subject to the same rules as regards procedure and appeals as decrees and orders passed by the District Judge.

Continuance of Assistant Judge's appellate jurisdiction.

18. A person filling the office of Assistant Judge, on whom the power of hearing appeals has once been conferred under section 17, shall continue to have this power so long and so often as he may fill the office of Assistant Judge, without reference to the district in which he may be employed :

Provided that the Governor of Bombay in Council may, by notification in the Government Gazette, at any time withdraw such power.

Power to invest Assistant Judge with powers of District Judge.

19. The Governor of Bombay in Council may, by notification in the Government Gazette, invest an Assistant Judge with all or any of the powers of a District Judge within a particular part of a district, and may, by like notification, from time to time determine and alter the limits of such part.

The jurisdiction of an Assistant Judge so invested shall *pro tanto* exclude the jurisdiction of the District Judge from within the said limits.

Every Assistant Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the Governor of Bombay in Council, and may, with the previous sanction of the High Court, hold it at any other place within such limits.

Assistant Judge to use seal of District Judge.

20. Every Assistant Judge shall use the seal of the District Judge to whom he is Assistant.

PART VI.

SUBORDINATE JUDGES.

Number of Civil Courts.

21. There shall be in each district so many Civil Courts subordinate to the District Court as the Governor of Bombay in Council, acting under the general control of the Governor General of India in Council, shall from time to time direct :

[1][Provided that for special reasons it shall be lawful for the Governor of Bombay in Council at any time to close temporarily any such Subordinate Court.]

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[1] This proviso was inserted by s. 3 of the Bombay Civil Courts Amendment Act, 1900 (Bom. Act 1 of 1900), Vol. IV of this Code.

22. The Judges of such Subordinate Courts shall be appointed by the Governor of Bombay in Council, and shall be called Subordinate Judges. **Appointment of Subordinate Judges.**

No person shall be appointed a Subordinate Judge unless he be a [1][subject of Her Majesty or a subject of a Native Prince or State in India under the suzerainty of Her Majesty, and is also a person] who has practised [2][three] years as an advocate of a High Court in India or as a vakil in the High Court of Judicature in Bombay, or who has qualified for the duties of a Subordinate Judge according to such tests as may for the time being be prescribed by such High Court, or who has taken the degree of Bachelor of Laws in the University of Bombay.

The tests so prescribed by the High Court shall be notified in the Government Gazette.

[3]**22A.** The Governor of Bombay in Council may, by notification in the official Gazette, fix, and, by a like notification, from time to time, alter the local limits of the ordinary jurisdiction of the Subordinate Judges. **Power to fix local limits of jurisdiction of Subordinate Judges.**

23. The Subordinate Judges shall hold their Courts at such place or places as the Governor of Bombay in Council may from time to time appoint within the local limits of their respective jurisdictions: **Situation of Subordinate Courts.**

[4][Provided that for special reasons it shall be lawful for the Governor of Bombay in Council to order that a Subordinate Judge shall hold his Court at a place outside the local limits of his jurisdiction.]

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Subordinate Judge shall hold his Court at each of such places, and the Subordinate Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.

The same person may be the Judge of more than one subordinate Court; and in such cases the District Judge shall, subject to the control of the High Court, prescribe rules for regulating the time during which the Subordinate Judge shall sit in each Court.

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[1] These words were substituted for the words "subject of the Queen" by s. 2 of the Bombay Civil Courts Act Amendment Act, 1895 (Bom. Act 3 of 1895), Vol. III of this Code.

[2] The word "three" was substituted for the word "five" by s. 1 of the Bombay Civil Courts Amendment Act, 1912 (Bom. Act 5 of 1912), Vol. V of this Code.

[3] S. 22A was inserted by s. 2 of the Bombay Civil Courts Act, 1880 (9 of 1880), *infra*.

[4] This proviso was inserted by s. 4 of the Bombay Civil Courts Amendment Act, 1900 (Bom. Act 1 of 1900), Vol. IV of this Code.

Appointment of Joint Subordinate Judges.

[1] [For the purpose of assisting the Judge of any subordinate Court in the disposal of the civil business on his file, the Governor of Bombay in Council may appoint to such Court one or more Joint Subordinate Judges, or the District Judge may, with the previous sanction of the High Court, depute to such Court the Judge of another subordinate Court within the district. A Subordinate Judge thus appointed or deputed to assist in the Court of another Subordinate Judge shall dispose of such civil business within the limits of his pecuniary jurisdiction as may, subject to the control of the District Judge, be referred to him by the Judge of such Court.

Provisions applicable to Joint Subordinate Judges.

For the purposes of this section the provisions of the Act applicable to Subordinate Judges shall be, and shall be deemed always to have been applicable to Joint Subordinate Judges: Provided that no such Joint Subordinate Judge shall hear and determine any suit instituted under section 4 of the [2] Dekkhan Agriculturists' Relief Act, 1879, unless the value of the said suit falls within the limits of the pecuniary jurisdiction conferred on him by that Act.] XVII of 1879.

Classes of Subordinate Judges.

24. The Subordinate Judges shall be of two classes.

Jurisdiction of Subordinate Judge of first class.

The jurisdiction of a Subordinate Judge of the first class extends to all original suits and proceedings of a civil nature.

Jurisdiction of Subordinate Judge of second class.

The jurisdiction of a Subordinate Judge of the second class extends to all original suits and proceedings of a civil nature wherein the subject-matter does not exceed in amount or value five thousand rupees.

Special jurisdiction of Subordinate Judge of first class.

25. A Subordinate Judge of the first class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature, wherein the subject-matter exceeds five thousand rupees in amount or value as may arise within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the second class.

In districts to which more than one Subordinate Judge of the first class have been appointed, the District Judge, subject to the orders of the High Court, shall assign to each the local limits within which his said special jurisdiction is to be exercised.

Appeals from his decision.

26. In all suits decided by a Subordinate Judge of the first class in the exercise of his ordinary and special original jurisdiction of which the amount

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[1] These two paragraphs were substituted for the original last paragraph of s. 23 by Bom. Act 1 of 1900, s. 4, Vol. IV of this Code.

The original paragraph was as follows :—

"The Judge of any subordinate Court may, with the previous sanction of the High Court, be deputed by the District Judge to the Court of another Subordinate Judge for the purpose of assisting him in the disposal of the suits on his file."

[2] *Infra.*

or value of the subject-matter exceeds five thousand rupees, the appeal from his decision shall be direct to the High Court.

Appellate jurisdiction of Subordinate Judge of first class or Judge of Court of Small Causes.

27. The Governor of Bombay in Council may invest any Subordinate Judge of the first class [1][or any Judge of the Court of Small Causes established under the Provincial Small Cause Courts Act, 1887, in any place to which this section extends] with power to hear appeals from such decrees and orders of Subordinate Courts as may be referred to him by the Judge of the district.

IX of 1887.

Decrees and orders so passed in appeal by a Subordinate Judge of the first class [1][or a Judge of a Court of Small Causes] shall have the same force as if passed by a District Judge.

[2][A Subordinate Judge of the first class or a Judge of a Court of Small Causes, on whom the power of hearing appeals has once been conferred under this section, shall continue to have this power so long and so often as he may fill the office of Subordinate Judge of the first class or Judge of a Court of Small Causes respectively, without reference to the district in which he may be employed: Provided that the Governor of Bombay in Council may, by notification in the Government Gazette, at any time withdraw such power.]

Power to invest Subordinate Judges with small cause powers.

28. [3][The Governor of Bombay in Council may invest, within such local limits [4] as he shall from time to time appoint, any Subordinate Judge with the jurisdiction of a Court of Small Causes for the trial of suits cognizable by such Courts up to such amount as he may deem proper, not exceeding in the case of any Subordinate Judge of the first class one thousand rupees, and in the case of any Subordinate Judge of the second class two hundred rupees.]

The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested.

Power to invest Subordinate Judges with jurisdiction under certain Acts.

[5][**28A.** (*1*) The High Court may by general or special order invest any Subordinate Judge, within such local limits and subject to such pecuniary

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[1] These words were inserted by s. 5 of the Bombay Civil Courts Amendment Act, 1900 (Bom. Act 1 of 1900), Vol. IV of this Code.

[2] This paragraph was substituted for the original paragraph by Bom. Act 1 of 1900, s. 5, Vol. IV of this Code. The original paragraph was as follows:—

"The Governor of Bombay in Council may, whenever he thinks fit, withdraw such jurisdiction from any Subordinate Judge so invested."

[3] This paragraph was substituted for the original paragraph by s. 6 of *ibid.*

The original paragraph was as follows:—

"The Governor of Bombay in Council may invest, within such local limits as he shall from time to time appoint any Subordinate Judge of the first class with the jurisdiction of a Judge of a Court of Small Causes, for the trial of suits cognizable by such Courts up to the amount of five hundred rupees, and any Subordinate Judge of the second class with the same jurisdiction up to the amount of fifty rupees."

[4] That is, in territories other than those in which the Dekkhan Agriculturists' Relief Act, 1879 (17 of 1879), is in force; *see* s. 5 of Act 17 of 1879, *infra.*

[5] Section 28 A was inserted by s. 2 of the Bombay Civil Courts Amendment Act, 1912 (Bom. Act 5 of 1912), Vol. V of this Code.

limitation as may be prescribed in such order, with all or any of the powers of a District Judge or a District Court as the case may be under the Indian Succession Act, 1865,[1] the Probate and Administration Act, 1881,[2] or paragraph 5 of Schedule III to the Code of Civil Procedure, 1908[3].

X of 1865. V of 1881. V of 1908.

(*2*) Every order made by a Subordinate Judge by virtue of the powers conferred upon him under sub-section (*1*) shall be subject to appeal to the High Court or the District Court according as the amount or value of the subject-matter exceeds or does not exceed five thousand rupees.

(*3*) Every order of the District Judge passed on appeal under sub-section (*2*) from the order of a Subordinate Judge shall be subject to an appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals from appellate decrees.]

Seal of Subordinate Judge.

29. Each Subordinate Judge shall use a seal one inch and-a-half in diameter, bearing the Royal Crown with the following inscription in English and the principal language of the district :—" Subordinate Judge of ."

30, 31. [*First Subordinate Judges; pending proceedings.*] *Rep. Act XII of 1876.*

Reference of Government suits.

32. [4] [No Subordinate Judge or Court of Small Causes shall receive or register a suit in which the Government or any officer of Government in his official capacity is a party, but in every such case such Judge or Court shall refer the plaintiff to the District Judge, in whose Court alone (subject to the provisions of section 19) such suit shall be instituted :]

[5] [Provided that nothing in this section shall be deemed to apply to any suit merely because—

(*a*) a Municipal Corporation constituted under [6] Bombay Act VI of 1873 or any other enactment for the time being in force, is a party to such suit and an officer of Government is in his official capacity a member of such corporation, or

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[1] Genl. Acts, Vol. I.

[2] Genl. Acts, Vol. III.

[3] Genl. Acts, Vol. VI.

[4] This paragraph was substituted for the original section by s. 15 of the Bombay Revenue Jurisdiction Act, 1876 (10 of 1876), *infra*.

The original section was as follows :—

" No Subordinate Judge shall receive or register a suit in which Government or any officer of Government in his official capacity is a defendant, but he shall refer the party presenting the plaint in such suit to the District Judge, in whose Court alone such suit shall be instituted."

[5] This proviso was added by s. 3 of the Bombay Revenue Jurisdiction Act, 1880 (15 of 1880), *infra*.

[6] *See* now the Bombay District Municipal Act, 1901 (Bom. Act 3 of 1901), Vol. IV of this Code.

[1] (*b*) an officer—

(i) of a Court who has been appointed under the [2] Code of Civil Procedure, section 456, last paragraph;

(ii) of Government to whom the powers of a curator have been delegated under section 5 of [3] Act XIX of 1841, or who has been appointed manager of the estate of a lunatic under section 9 of [4] Act XXXV of 1858, or who has been appointed or declared by a Court in virtue of his office to be a guardian of the person or property, or both, of a minor under the [5] Guardian and Wards Act, 1890,]

is in virtue of such appointment, delegation or declaration a party to such suit, [6] [or

(*c*) an officer of Government—

(i) who has been declared or appointed to be the sole member or one of a board constituting a Court of Wards, or

(ii) to whom all or any of the powers of a Court of Wards have been delegated, or

(iii) through whom all or any of the powers of a Court of Wards are exercised, or

(iv) who has been appointed a manager of the property of a Government ward, or

(v) who has been appointed a guardian of the person of a Government ward, or

(vi) who has been appointed a guardian of the person or property, or both, of a minor,

under section 3, sub-section (*1*) of section 19, sub-section (*2*) of section 19, section 20, sub-section (*1*) of section 22 or sub-section (*1*) of section 41, respectively, of the Bombay Court of Wards Act, 1905 [7],

is in virtue of such declaration, appointment, delegation or exercise of powers a party to such suit.] Bom. I of 1905.

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[1] This clause was substituted for the original clause by s. 3 of the Bombay Civil Courts Act Amendment Act, 1895 (Bom. Act 3 of 1895), Vol. III of this Code.

The original clause (*b*) of this proviso as added by the Bombay Revenue Jurisdiction Act, 1880 (15 of 1880), *infra*, was as follows:—

"(*b*) An officer of a Court appointed under the Code of Civil Procedure, section 456, last paragraph, or selected under Act No. XX of 1864 (*for making better provision for the care of the persons and property of minors in the Presidency of Bombay*), s. 9, is in virtue of such appointment or selection a party to such suit."

[2] *See* now the Code of Civil Procedure, 1908, (Act 5 of 1908), Genl. Acts, Vol. VI.

[3] The Succession (Property Protection) Act, 1841, Genl. Acts, Vol. I.

[4] The Lunacy District Courts Act, 1858 (35 of 1858), now repealed.

[5] Genl. Acts, Vol. IV.

[6] Clause (*c*) was added by s. 2 of the Bombay Civil Courts (Amendment) Act, 1914 (Bom. Act 5 of 1914), Vol. V of this Code.

[7] Vol. IV of this Code.

Removal or Suspension.

Commission of inquiry into alleged misconduct.

33. Whenever the High Court is of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misconduct by any Subordinate Judge, the High Court may appoint a Commissioner or Commissioners for the purpose of holding such an inquiry, and on the receipt of his or their report may order that the Subordinate Judge be removed or suspended from office, or reduced to a lower class.

The provisions of [1]Act No. XXXVII of 1850 (*for regulating inquiries into the behaviour of public servants*) shall apply to inquiries under this section, the powers conferred by that Act on the Government being exercised by the High Court.

Suspension of Subordinate Judges by High Court; by District Judge.

34. The High Court may suspend any Subordinate Judge from office pending the result of an inquiry into his behaviour under this section.

Any District Judge may, whenever he sees urgent necessity for so doing, suspend from office any Subordinate Judge under his control. But, whenever the District Judge suspends any such Subordinate Judge, he shall forthwith report the case for the orders of the High Court.

Saving of power of Government to suspend or dismiss.

Nothing in this section or in section 33 shall be held to interfere with the right of Government to suspend, or remove from office, any Subordinate Judge at their discretion.

PART VII.

Temporary Vacancies.

Temporary vacancy of Office of District Judge.

35. In the event of the death of the District Judge or of his being prevented from performing his duties by illness or other casualty, or of his absence from his district on leave, the first in rank of the Assistant Judges in the district, or in the absence from the district of an Assistant Judge the first in rank of the Subordinate Judges, shall assume charge of the District Court without interruption to his ordinary jurisdiction, and while so in charge shall perform the duties of a District Judge with respect to the filing of suits and appeals, receiving pleadings, execution of processes, return of writs and the like, and shall be designated Assistant Judge or Subordinate Judge, as the case may be, in charge of the district, and shall continue in such charge until the office of District Judge may be resumed or assumed by an officer duly appointed thereto.

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[1] The Public Servants (Inquiries) Act, 1850, Genl. Acts, Vol. I.

36. Any District Judge leaving the sadr station and proceeding on duty to any place within his district may delegate to an Assistant Judge, or in the absence of an Assistant Judge to a Subordinate Judge at the sadr station, the power of performing such of the duties enumerated in section 35 as may be emergent; and such officer shall be designated Assistant or Subordinate Judge, as the case may be, in charge of the sadr station. Delegation of powers of District Judge.

37. In the event of the death, suspension or temporary absence of any Subordinate Judge, the District Judge may empower the Judge of any subordinate Court of the same district to perform the duties of the Judge of the vacated subordinate Court, either at the place of such Court or of his own Court; but in every such case the registers and records of the two Courts shall be kept distinct. Temporary vacancy of office of Subordinate Judge.

PART VIII.

MINISTERIAL OFFICERS.

38. All ministerial officers of the Civil Courts in each district shall be appointed, and may be fined, suspended or dismissed, by the District Judge, subject to such rules as the High Court may from time to time prescribe: Appointment, etc., of ministerial officers.

Provided that the Judge of every Subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do not exceed rupees ten per mensem, and may by order fine, suspend or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office.

Every such order shall be subject to appeal to the District Judge; and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto shall apply to all appeals under this section.

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being.

39. The duties of the said ministerial officers shall be regulated by such rules as the High Court may from time to time prescribe. Duties of ministerial officers.

40. [1][The District Judge] may, under the general control of [1][the Governor of Bombay in Council,] appoint to any Civil Court under this Act [1][within the local limits of his jurisdiction] a clerk of the Court, who, in Power to appoint clerks of the Courts.

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[1] The words "The District Judge" were substituted for the words "The Governor of Bombay in Council", the words "the Governor of Bombay in Council" were substituted for the words "the Governor General of India in Council", and the words "within the local limits of his jurisdiction" were inserted by s. 7 of the Bombay Civil Courts Amendment Act, 1900 (Bom. Act 1 of 1900), Vol. IV of this Code.

addition to such duties as may from time to time be prescribed by the High Court, may receive and register plaints, and shall refer such as he may consider should be refused for the orders of the Judge of the Court, and may sign all processes, and authenticate copies of papers.

Power to transfer clerk of the Court or ministerial officer.

[1][**40A.** (*1*) The Governor of Bombay in Council may transfer a clerk of the Court or ministerial officer from any Civil Court under this Act to any other such Court.

(*2*) The District Judge may transfer a clerk of the Court or ministerial officer from any such Court within the local limits of his jurisdiction to any other such Court within those limits.]

PART IX.

MISCELLANEOUS.

Rules for keeping proceedings.

41. The proceedings of each Civil Court shall be kept and recorded according to such rules as the High Court may from time to time prescribe. The High Court shall also lay down rules under which copies of papers may be granted.

Licensed petition-writers.

[2][**41A.** (*1*) The High Court may, from time to time, make rules consistent with this Act and any other enactment for the time being in force—

(*a*) declaring what persons shall be permitted to act as petition-writers in the Courts subordinate to it ;

(*b*) regulating the issue of licenses to such persons, the conduct of business by them, and the scale of fees to be charged by them ; and

(*c*) providing a penalty of fine not exceeding fifty rupees for the breach of any of the rules so made, and determining the authority by which such breaches of the rules shall be investigated and the penalties imposed.

(*2*) Every fine imposed under clause (*c*) of sub-section (*1*) shall be recoverable as if it were a fine imposed by a Magistrate in the exercise of his ordinary jurisdiction.]

Fees for Process.

42. The High Court shall from time to time, with the sanction of the Governor of Bombay in Council, prescribe and regulate the fees to be taken for any process issued by any Court the constitution of which is declared by this Act, or by any officer of such Court.

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[1] Section 40A was inserted by the Bombay Civil Courts Amendment Act, 1900 (Bom. Act 1 of 1900), s. 8, Vol. IV of this Code.

[2] S. 41A was inserted by s. 9, *ibid.*

Tables of the fees so prescribed shall be published in the Government Gazette.

43. The District and Subordinate Courts shall sit from day to day except on Sundays, New Year's Day, Good Friday, Christmas Day and Her Majesty's Birthday, and such other days as may be sanctioned for each or every district by the High Court. Sittings of Courts.

The High Court may also permit the Civil Courts under its control to adjourn for a period or periods not exceeding in the whole six weeks in each year. Vacation.

THE SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. Act XIV of 1870.*]

THE CORONERS ACT, 1871.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
2. [*Repealed.*]

CHAPTER II.

APPOINTMENT OF CORONERS.

3. Coroners of Calcutta and Bombay.
4. Their appointment, suspension and removal.
5. Coroners to be public servants.
6. Power to hold other offices.
7. [*Repealed.*]

CHAPTER III.

DUTIES AND POWERS OF CORONERS.

8. Jurisdiction to inquire into deaths.
9. Coroner to be sent for when prisoner dies.
10. Power to hold inquests on bodies within local limits wherever cause of death occurred.

SECTIONS.

11. Power to order body to be disinterred.
12. Summoning jury.
Inquest may be on Sunday.
13. Opening Court.
14. Jurors to be sworn.
15. View of body.
16. Proclamation for witnesses.
17. Summoning witnesses.
18. *Post-mortem* examinations.
Fees to medical witnesses.
18A. Report of Chemical Examiner.
19. Evidence to be on oath.
Evidence on behalf of accused.
Interpreter.
Questions suggested by jury.
20. Coroner to take down evidence in writing.
Witnesses to sign depositions.
Coroner to subscribe depositions.
Coroner a Magistrate.
21. Adjournment of inquest.
Jurors' recognizances.
22. Coroner to sum up to jury.
23. Coroner to draw up inquisition.
24. Contents of inquisition.
25. Procedure where death is found due to an act amounting to an offence.
26. Power to arrest and commit for trial.
27. [*Repealed.*]
28. Warrant for burial.
29. Inquisitions not to be quashed for want of form.
Amendment of inquisition.
30. Cessation of jurisdiction as to treasure trove, wrecks, etc.
Felo de se.
Deodands.

CHAPTER IV.

CORONERS' JURIES.

31. Fine on juror neglecting to attend.
32. Certificate as to defaulting juror.
Service of copy of certificate.
33. Levy of fine.

SECTIONS.
34. Jurors not to be summoned twice within the year.
35. Jurors on inquest on prisoner.

CHAPTER V.
RIGHTS AND LIABILITIES OF CORONERS.
36. Coroner's salary.
37. Disbursements to be repaid.
38. Power to appoint deputy.
Revocation of appointment.
39. Exemption from serving on juries.
40. Privilege from arrest.
41. Penalty for failure to comply with Act.
42. Limitation of suits.

FIRST SCHEDULE.—[*Repealed.*]
SECOND SCHEDULE.—Form of Inquisition.

ACT No. IV OF 1871[1].

[*27th January, 1871.*]

An Act to consolidate and amend the laws relating to Coroners.

WHEREAS it is expedient to consolidate and amend the laws relating to Coroners in the Presidency-towns; It is hereby enacted as follows:— Preamble.

CHAPTER I.
PRELIMINARY.

1. This Act may be called the Coroners Act, 1871. Short title.

[2] * * * * * *

2. [*Repeal of enactments.*] *Rep. Act XII of 1873.*

CHAPTER II.
APPOINTMENT OF CORONERS.

[3] [**3.** Within the local limits of the ordinary original civil jurisdiction of each of the High Courts of Judicature at Fort William and Bombay there shall be a Coroner. Such Coroners shall be called respectively the Coroner of Calcutta and the Coroner of Bombay.] Coroners of Calcutta and Bombay.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V, p. 295; for Preliminary Report of the Select Committee, *see ibid*, p. 351; and for Proceedings in Council, *see ibid*, Supplement, pp. 1077, 1195, 1298; and *ibid*, 1871, pp. 198 and 207.

[2] The local extent and commencement clauses of this section were repealed, respectively, by s. 2, of the Coroners Act, 1881 (10 of 188), *infra*, and by the Repealing Act, 1874 (16 of 1874).

[3] This section was substituted by s. 2 of the Coroners (Madras) Act, 1889 (5 of 1889), *infra*.

The original section was as follows:—

"Within the local limits of the ordinary original civil jurisdiction of each of the said High Courts, there shall be a Coroner. Such Coroner shall be called, respectively, the Coroner of Calcutta, the Coroner of Madras, and the Coroner of Bombay."

Their appointment, suspension and removal.

4. Every such officer shall be appointed and may be suspended or removed by the Local Government. * * * * * * * [1].

Coroners to be public servants.

5. Every Coroner shall be deemed a public servant within the meaning of the [2]Indian Penal Code. XLV of 1860.

Power to hold other offices.

6. Any Coroner may hold simultaneously any other office under Government.

7. [*Oath to be taken by Coroner.*] *Rep. Act X of 1873.*

CHAPTER III.

Duties and Powers of Coroners.

Jurisdiction to inquire into death.

8. When a Coroner [3][has reason to believe] that the death of any person has been caused by accident, homicide, suicide, or suddenly by means unknown, or that any person being a prisoner has died in prison,

and that the body is lying within the place for which the Coroner is so appointed,

the Coroner shall inquire into the cause of death.

Every such inquiry shall be deemed a judicial proceeding within the meaning of section 193 of the [2]Indian Penal Code. XLV of 1860.

Coroner to be sent for when prisoner dies.

9. Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is [4][disposed of]. Any Superintendent failing herein shall on conviction before a Magistrate be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease.

Power to hold inquests on bodies within local limits wherever cause of death occurred.

10. Whenever an inquest ought to be holden on any body lying dead within the local limits of the jurisdiction of any Coroner, he shall hold such inquest, whether or not the cause of death arose within his jurisdiction.

Power to order body to be disinterred.

11. A Coroner may order a body to be disinterred within a reasonable time after the death of the deceased person either for the purpose of taking an original inquisition where none has been taken, or a further inquisition

[1] The words "Every person now holding such office shall be deemed to have been appointed under this Act" were repealed by the Repealing and Amending Act, 1891 (12 of 1891).

[2] Genl. Acts, Vol. I.

[3] These words were substituted for the words "is informed" by s. 5 of the Coroners Act, 1881 (10 of 1881), *infra*.

[4] These words were substituted for the word "buried" by s. 2 of the Coroners (Amendment) Act, 1908 (4 of 1908), *infra*.

[1] [where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition].

12. On receiving notice of any death mentioned in section 8, the Coroner shall summon five, seven, nine, eleven, thirteen or fifteen respectable persons to appear before him at a time and place to be specified in the summons, for the purpose of inquiring when, how and by what means the deceased came by his death. Summoning jury.

Any inquest under this Act may be held on a Sunday. Inquest may be on Sunday.

13. When the time arrives, the Coroner shall proceed to the place so specified, open the Court by proclamation, and call over the names of the jurors. Opening Court.

14. When a sufficient jury is in attendance, he shall administer an oath to each juror to give a true verdict according to the evidence, and shall then proceed with the jury to view the body. Jurors to be sworn.

15. The Coroner and the jury shall view and examine the body at the first sitting of the inquest, and the Coroner shall make such observations to the jury as the appearance of the body requires. View of body.

[2] [Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence or medical certificates, that no advantage would result from such viewing].

16. The Coroner shall then make proclamation for the attendance of witnesses, or, where the inquiry is conducted in secret, shall call in separately such as know anything concerning the death. Proclamation for witnesses.

17. [3] It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses; the Coroner shall inquire of such circumstances and the cause of death, and, if before or during the inquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest. Summoning witnesses.

[3] Any person disobeying such summons shall be deemed to have

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[1] These words were substituted for the words "where the first was insufficient" by s. 3 of the Coroners (Amendment) Act, 1908 (4 of 1908), *infra*.

[2] This proviso was added by s. 4, *ibid*.

[3] These paragraphs were substituted for the original by s. 6 of the Coroners Act, 1881 (10 of 1881), *infra*.

The first paragraph was the same as the present with the omission of the words "whether within ..... his jurisdiction" and of the words "or produce any document" and of the words "or produce such document."

The second paragraph was as follows:—

"Any person failing so to attend or give evidence shall be deemed to have committed an offence under section one hundred and seventy-four or one hundred and seventy-six of the Indian Penal Code, as the case may be."

committed an offence under section 174, section 175 or section 176 of the [1] Indian Penal Code, as the case may be. XLV of 1860.

For the purpose of causing prisoners to be brought up to give evidence, the Coroner shall be deemed a Criminal Court within the meaning of [2] [Part IX of the [3] Prisoners Act, 1900.] III of 1900.

Post-mortem examinations.

18. The Coroner may direct the performance of a *post-mortem* examination with or without an analysis of the contents of the stomach or intestines by any medical witness summoned to attend the inquest : and every medical witness, other than the Chemical Examiner to Government, shall be entitled to such reasonable remuneration as the Coroner thinks fit.

Fees to medical witnesses.

Report of Chemical Examiner.

[4] [**18A.** Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the Code of Criminal Procedure, 1898.]

Evidence to be on oath. Evidence on behalf of accused. Interpreter.

19. All evidence given under this Act shall be on oath, and the Coroner shall be bound to receive evidence on behalf of the party (if any) accused of causing the death of the deceased person.

Witnesses unacquainted with the English language shall be examined through the medium of an interpreter, who shall be sworn to interpret truly as well the oath as the questions put to, and the answers given by, the witnesses.

Questions suggested by jury.

After each witness has been examined, the Coroner shall inquire whether the jury wish any further questions to be put to the witness, and, if the jury wish that any such questions shall be put, the Coroner shall put them accordingly.

Coroner to take down evidence in writing.

20. The Coroner shall commit to writing the material parts of the evidence given to the jury, and shall read or cause to be read over such parts to the witness and then procure his signature thereto.

Witnesses to sign depositions.

Any witnesses refusing so to sign shall be deemed to have committed an offence under section 180 of the [1] Indian Penal Code. XLV of 1860.

Coroner to subscribe depositions.

Every such deposition shall be subscribed by the Coroner.

Coroner a Magistrate.

[5] For the purposes of section 26 of the [6] Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate. I of 1872.

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[1] Gen. Acts, Vol. I.

[2] These words and figures were substituted by Act 4 of 1908, *infra*, for the words and figures ", Act No. XV of 1869 (*to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them*)".

[3] Genl. Acts, Vol. V.

[4] Section 18A was inserted by s. 6 of the Coroners (Amendment) Act, 1908 (4 of 1908), *infra*.

[5] This clause was added by s. 7 of the Coroners Act, 1881 (10 of 1881), *infra*.

[6] Genl. Acts Vol. II.

21. The Coroner may adjourn the inquest from time to time, and from place to place. Adjournment of inquest.

Whenever the inquest is adjourned the Coroner shall take the recognizances of the jurors to attend at the time and place appointed, and notify to the witnesses when and where the inquest will be proceeded with. Jurors' recognizances.

The amount of such recognizances shall in each case be fixed by the Coroner [1][and the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31].

22. When all the witnesses have been examined, the Coroner shall sum up the evidence to the jury, and the jury shall then consider of their verdict. Coroner to sum up to jury.

23. When the verdict is delivered the Coroner shall draw up the inquisition according to the finding of the jury, or, when the jury is not unanimous, according to the opinion of the majority. Coroner to draw up inquisition.

24. Every inquisition under this Act shall be signed by the Coroner with his name and style of office and by the jurors, and shall set forth— Contents of inquisition.

(*1*) where, when and before whom the inquisition is holden,

(*2*) who the deceased is,

(*3*) where his body lies,

(*4*) the names of the jurors, and that they present the inquisition upon oath,

(*5*) where, when and by what means the deceased came by his death, and

(*6*) if his death was occasioned by the criminal act of another, who is guilty thereof.

If the name of the deceased be unknown, he may be described as a certain person to the jurors unknown.

Every such inquisition shall be in the form set forth in the second schedule hereto annexed, with such variation as the circumstances of each case require.

[2] [**25.** When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police.] Procedure where death is found due to an act amounting to an offence.

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[1] These words were added by s. 7 of the Coroners (Amendment) Act, 1908 (4 of 1908), *infra*.

[2] Section 25 was substituted by s. 8, *ibid*.

Power to arrest and commit for trial.

[1] [**26.** The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial.]

27. [*Power to accept bail.*] *Rep. Act IV of 1908, s. 10.*

Warrant for burial.

28. When the proceedings are closed, or before, if it be necessary to adjourn the inquest, the Coroner shall give his warrant for the [2] [disposal] of the body on which the inquest has been taken.

Inquisitions not to be quashed for want of form.

29. No inquisition found upon or by any inquest shall be quashed for any technical defect.

Amendment of inquisition.

In any case of technical defect, a Judge of the High Court may, if he thinks fit, order the inquisition to be amended, and the same shall forthwith be amended accordingly.

Cessation of jurisdiction as to treasure trove, wrecks, etc.

30. It shall no longer be the duty of the Coroner to inquire whether any person dying by his own act was or was not *felo de se*, to inquire of treasure trove or wrecks, to seize any fugitive's goods, to execute process or to exercise as Coroner any jurisdiction not expressly conferred by this Act.

Felo de se.

A *felo de se* shall not forfeit his goods.

Deodands.

Deodands are hereby abolished.

CHAPTER IV.

CORONERS' JURIES.

Fine on juror neglecting to attend.

31. Whenever any person has been duly summoned to appear as a juror by a Coroner, and fails or neglects to attend at the time and place specified in the summons, the Coroner may cause him to be openly called in his Court three times to appear and serve as a juror; and upon the non-appearance of such person, and proof that such summons has been served upon him or left at his usual place of abode, may impose such fine upon the defaulter, not exceeding fifty rupees, as to the Coroner seems fit.

Certificate as

32. The Coroner shall make out and sign a certificate, containing the

[1] Section 26 was substituted by s. 9 of the Coroners (Amendment) Act, 1908 (4 of 1908), *infra*.

[2] This word was substituted for the word "burial" by s. 11, *ibid*.

name and surname, the residence and trade or calling of every person so making default, together with the amount of the fine so imposed, and the cause of such fine, to defaulting juror.

and shall send such certificate to one of the Magistrates of the place of which he is the Coroner,

and shall cause a copy of such certificate to be served upon the person so fined, by having it left at his usual place of residence, or by sending the same through the Post Office, addressed as aforesaid and registered. Service of copy of certificate.

33. Thereupon such Magistrate shall cause the fine to be levied in the same manner as if it had been imposed by himself. Levy of fine.

34. Unless in case of necessity, no person who has appeared, or has been summoned to appear, as a juror on an inquest, and has not made default shall, within one year after such appearance or summons, be summoned to appear as a juror under this Act. Jurors not to be summoned twice within the year.

35. When an inquest is held on the body of a prisoner dying within a prison, no officer of the prison and no prisoner confined therein shall be a juror on such inquest. Jurors on inquest on prisoner.

CHAPTER V.

Rights and Liabilities of Coroners.

36. Every Coroner shall be entitled to such salary for the performance of the duty of his office as is prescribed in that behalf by the [1] Local Government]. Coroner's salary.

37. All disbursements duly made by a Coroner for fees to medical witnesses, hire of rooms for the jury, and the like, shall be repaid to him by the Local Government. Disbursements to be repaid.

38. Every Coroner may from time to time, with the previous sanction of the Local Government, appoint, by writing under his hand, a proper person to act for him as his deputy in the holding of inquests [2] * * * * *. Power to appoint deputy.

All inquests taken and other acts done by any such deputy, under or by virtue of any such appointment, shall be deemed to be the acts of the Coroner appointing him:

Provided that no such deputy shall act for any such Coroner except during the illness of the said Coroner, or during his absence for any lawful and reasonable cause.

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[1] These words were substituted for the words "Governor General in Council" by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

[2] The words "and such deputy shall take and subscribe, before one of the Judges of the High Court, an oath that he will faithfully discharge the duties of office" were repealed by the Indian Oaths Act, 1873 (18 of 1873), Genl. Acts, Vol. II.

Revocation of appointment.

Every such appointment may at any time be cancelled and revoked by the Coroner by whom it was made.

Exemption from serving on juries.

39. No Coroner or Deputy Coroner shall be liable to serve as a juror.

Privilege from arrest.

40. Coroners and Deputy Coroners shall be privileged from arrest while engaged in the discharge of their official duty.

Penalty for failure to comply with Act.

41. Any Coroner or Deputy Coroner failing to comply with the provisions of this Act, or otherwise misconducting himself in the execution of his office, shall be liable to such fine as the Chief Justice of the High Court, upon summary examination and proof of the failure or misconduct, thinks fit to impose.

Limitation of suits.

42. No proceeding for anything done under this Act, or for any failure to comply with its provisions, shall be commenced or prosecuted [1] * * * * after tender of sufficient amends.

FIRST SCHEDULE.

[ENACTMENTS REPEALED.]

Rep. Act. XII of 1873.

SECOND SCHEDULE.

FORM OF INQUISITION.

AN INQUISITION taken at on the day of 187 , before *E F*, Coroner of [2] [in the case of *A B* deceased] upon the oath of *G H, I J, K L*, and *M N*, then and there duly sworn and charged to inquire when, how and by what means the said *A B* came to his death.

We, the said jurors, find unanimously [*or* by a majority of] that the death of the said *A B* was caused, on or about the day of 187 , by [*here state the cause of death as in the following examples*].—

1. *Cases of homicide*]—a blow on the head with a stick inflicted on him by *C D*, under such circumstances that the act of *C D* was justifiable [*or* accidental] homicide.
   —a stab on the heart with a knife inflicted on him by *C D* under such circumstances that the act of *C D* was culpable homicide not amounting to murder [*or* culpable homicide amounting to murder, *or* a rash *or* negligent act not amounting to culpable homicide].
2. *Cases of accident*]—falling out of a boat into the river Hughli, whereby he was drowned.
   —a kick from a horse which fractured his skull and ruptured blood-vessels in his head.
3. *Cases of suicide*]—shooting himself through the head with a pistol.
   —arsenic, which he voluntarily administered to himself.
4. *Cases of sudden death by means unknown*]—disease of the heart.
   —apoplexy.
   —sunstroke.

And so say the jurors upon their oath aforesaid.

Witness our hands. *E F, Coroner of*
G H, I J, K L, M N, O P (jurors).

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[1] The words "after the expiration of three months from such fact or failure nor" were repealed by the Indian Limitation Act, 1871 (9 of 1871).

[2] These words were substituted for the words "on view of the body of *A B* then and there lying dead" by s. 12 of the Coroners (Amendment) Act, 1908 (4 of 1908), *infra*.

ACT No. V OF 1872[1].

[THE HIGH COURTS JURISDICTION (SINDH) ACT, 1872.]

[*28th March, 1872.*]

An Act to remove doubts as to jurisdiction of the High Court of Bombay over the Province of Sindh.

WHEREAS it is expedient to remove doubts which have arisen as to the jurisdiction of the High Court of Bombay over the Province of Sindh ; It is hereby enacted as follows :— Preamble.

1. The High Court of Bombay has not, and shall be deemed never to have had, jurisdiction over the Province of Sindh. Bar of jurisdiction in Sindh of Bombay High Court.

[2] **2.** Nothing herein contained shall be deemed to affect [3][the Administrator General's Act, 1874.] Saving of Act II of 1874.

II of 1874.

[2] **3.** Nothing herein contained shall be deemed to invalidate the grant of any probate or letters of administration heretofore or hereafter made by the High Court of Judicature at Bombay, or to affect the rights, powers or duties of any executor or administrator under, or by virtue of, any such probate or letters. Saving of probates and administrations.

[2] **4.** Nothing herein contained shall be deemed to affect the criminal jurisdiction of the said High Court so far as regards European British subjects of Her Majesty. Saving of High Court's criminal jurisdiction.

ACT No. XX OF 1872[4].

[*5th September, 1872.*]

An Act to amend Act No. V of 1872.

WHEREAS it is expedient to amend Act No. V of 1872 (*to remove doubts as to the jurisdiction of the High Court of Bombay over the Province of Sindh*) ; It is hereby enacted as follows :— Preamble.

1. The said Act shall be construed as if the following sections were added thereto :— Sections added to Act V of 1872.

[*Above.*]

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[1] For Proceedings in Council relating to this Act, *see* Gazette of India, 1872, Supplement, pp. 177, 197 and 315. The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[2] Ss. 2, 3 and 4 were added by Act 20 of 1872, *infra*.

[3] This reference was substituted for the original reference by the Repealing and Amending Act, 1891 (12 of 1891). The Administrator General's Act, 1874, has been repealed by the Administrator General's Act, 1913 (3 of 1913), Genl. Acts, Vol. VII.

[4] For Statement of Objects and Reasons, *see* Gazette of India, 1872, Pt. V, p. 612 ; for Proceedings in Council, *see ibid*, Supplement, pp. 804, 859 and 955.

THE BOMBAY REVENUE JURISDICTION ACT, 1876.

CONTENTS.

PREAMBLE.
SECTIONS.
1. Short title.
Commencement.
Extent.
2. [*Repealed.*]
3. Interpretation-clause.
4. Bar of certain suits.
Proviso.
5. Saving of certain suits.
6. Bar of certain suits against Revenue-officers.
7. Punishment or prosecution of Revenue-officers no bar to civil remedies.
8-10. [*Repealed.*]
11. Suits not to be entertained unless plaintiff has exhausted right of appeal.
12. Power of Government to refer questions for decision of High Court.
13. Power of Civil Judge to refer questions of jurisdiction to High Court.
14. Composition of Bench.
15. Amendment of section 32, Act XIV of 1869.
16. Privileges of Government in suits defended by it.
17. [*Repealed.*]
THE FIRST SCHEDULE.—[*Repealed.*]
THE SECOND SCHEDULE.

ACT No. X OF 1876.[1]

[*28th March, 1876.*]

An Act to limit the jurisdiction of the Civil Courts throughout the Bombay Presidency in matters relating to the Land-revenue, and for other purposes.

Preamble.

WHEREAS in certain parts of the Presidency of Bombay the jurisdiction of the Civil Courts in matters connected with the land-revenue is more extensive than it is in the rest of the said Presidency;

and whereas it is expedient that the jurisdiction of all the Civil Courts in the said Presidency should be limited in manner hereinafter appearing;

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1873, Pt. V, p. 534, for Preliminary Report of the Select Committee, *see ibid*, 1874, Pt. V, p. 70; for further Report of the Select Committee, *see ibid*, 1875, Pt. V, p. 210; and for Proceedings in Council, *see ibid*, 1875, Supplement, p. 4, and *ibid*, 1876, Supplement, pp. 344 and 405.

XIV of 1869. and whereas it is also expedient to amend the [1]Bombay Civil Courts-Act, section 32, *and to revive certain provisions of the* [2] *thirteenth section of Regulation XVII of 1827 of the Bombay Code, which was repealed by the Land Improvement Act, 1871* [3] * * * * * * * * *

XXVI of 1871.

It is hereby enacted as follows:—

1. This Act may be called the Bombay Revenue Jurisdiction Act, 1876. Short title.

So much of section 4 as relates to claims to set aside, on the ground of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue, shall come into force on such[4] day as the Governor General in Council directs in that behalf by notification in the Gazette of India. The rest of this Act shall come into force on the passing thereof: Commencement.

and it shall extend to all the territories for the time being under the government of the Governor of Bombay in Council, but not so as to affect— Extent.

(*a*) any suit regarding the assessment of revenue on land situate in the collectorate of Bombay, or the collection of such revenue;

(*b*) any of the provisions of Bombay Acts [5] V of 1862 and [5] VI of 1862, or of [6] [Act [7] XXI of 1881] or of [8] Act XXIII of 1871;

[9] * * * * * *.

2. [*Repeal of enactments.*] *Rep. Act XII of 1891.*

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

"land" includes the sites of villages, towns and cities: it also includes trees, growing crops and grass, fruit upon, and juice in, trees, rights-of-way, ferries, fisheries and all other benefits to arise out of land, and things attached to the earth or permanently fastened to things attached to the earth:

"land-revenue" means all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person on

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[1] *Supra.*

[2] S. 17 of this Act which revised s. 13 of Bom. Reg. 17 of 1827 was repealed by Act 15 of 1880, except in scheduled districts to which the Bombay Land Revenue Code, 1879 (Bom. Act 5 of 1879), has not been extended; *see* s. 2 of Act 15 of 1880, *infra.*

[3] The words "and to provide for the recovery by the Local Government of advances made for purposes other than those specified in section three of the Land Improvement Act, 1871," were repealed by the Repealing and Amending Act, 1894 (4 of 1894), *infra.*

[4] The 19th September, 1881—*see* notification No. 197, dated 18th March, 1881, in Gazette of India, 1881, Pt. I, p. 92.

[5] Vol. II of this Code.

[6] This reference was substituted for the words and figures "Act XV of 1871" by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[7] The Broach and Kaira Incumbered Estates Act, 1881, *infra.*

[8] The Pensions Act, 1871, Genl. Acts, Vol. II.

[9] Cl. (*c*) was repealed by the Repealing and Amending Act, 1895 (16 of 1895), *infra.* It was as follows:

"(*c*) any suit instituted before the passing of this Act."

account of any land held by or vested in him, and any cess or rate authorized by Government under the provisions of any law for the time being in force :

"Revenue-officer" means any officer employed in or about the business of the land-revenue, or of the surveys, assessment, accounts or records connected therewith.

Bar of certain suits.

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :

(*a*) claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognised under [1] Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjam, or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service ;

(*b*) objections—

to the amount or incidence of any assessment of land-revenue authorized by Government, or

to the mode of assessment, or to the principle on which such assessment is fixed, or

to the validity or effect of the notification of survey or settlement, or of any notification determining the period of settlement ;

(*c*) claims connected with or arising out of any proceedings for the realization of land-revenue or the rendering of assistance by Government or any officer duly authorized in that behalf to superior holders or occupants for the recovery of their dues from inferior holders or tenants ;

claims to set aside, on account of irregularity, mistake or any other ground except fraud, sales for arrears of land-revenue ;

(*d*) claims against Government—

(1) to be entered in the revenue-survey or settlement-records or village-papers as liable for the land-revenue, or as superior holder inferior holder, occupant or tenant, or

[1] The Bombay Hereditary Offices Act, 1874, Vol. II of this Code.

(2) to have any entry made in any record of a revenue-survey or settlement, or

(3) to have any such entry either omitted or amended;

(*e*) the distribution of land or allotment of land-revenue on partition of any estate under [1]Bombay Act IV of 1868 or any other law for the time being in force;

(*f*) claims against Government—

to hold land wholly or partially free from payment of land-revenue or to receive payments charged on or payable out of the land-revenue, or to set aside any cess or rate authorized by Government under the provisions of any law for the time being in force, or

respecting the occupation of waste or vacant land belonging to Government;

(*g*) claims regarding boundaries fixed under [1]Bombay Act No. I of 1865, or any other law for the time being in force, or to set aside any order passed by a competent officer under any such law with regard to boundary-marks:

Provided that, if any person claim to hold wholly or partially exempt from payment of land-revenue under— Proviso.

(*h*) any enactment for the time being in force expressly creating an exemption not before existing in favour of an individual or of any class of persons, or expressly confirming such an exemption on the ground of its being shown in a public record, or of its having existed for a specified term of years, or

(*i*) an instrument or sanad given by or by order of the Governor of Bombay in Council under [2]Bombay Act No. II of 1863, section 1, clause first, or [2]Bombay Act No. VII of 1863, section 2, clause first, or

(*j*) any other written grant by the British Government expressly creating or confirming such exemption, or

(*k*) a judgment by a Court of law, or an adjudication duly passed by a competent officer under [1]Bombay Regulation XVII of 1827, Chapter X, or under [3]Act No. XI of 1852, which declares the particular property in dispute to be exempt,

such claim shall be cognizable in the Civil Courts.

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[1] Bom. Act 4 of 1868, Bom. Act 1 of 1865 (except s. 37), and Bom. Reg. 17 of 1827 are repealed by the Bombay Land-revenue Code, 1879 (Bom. Act V of 1879), Vol. II of this Code, in areas in which the latter Act is in force.

[2] Vol. II of this Code.

[3] Bombay Rent-free Estates Act, 1852, *supra*.

Illustrations to (h).

(1) It is enacted that, in the event of the proprietary right in lands, the property of Government, being transferred to individuals, they shall be permitted to hold the lands for ever at the assessment at which they are transferred. The proprietary right in certain lands is transferred to A at an assessment of Rs. 100. An exemption from higher assessment not before existing is expressly created in favour of A by enactment, and he may seek relief in the Civil Court against over-assessment.

(2) It is enacted that, when a specific limit to assessment has been established and preserved, the assessment shall not exceed such specific limit. A is the owner of land worth Rs. 100 for assessment. He claims to be assessed at Rs. 50 only on the strength of a course of dealing with him and his predecessors under which his land has not been more highly assessed. There is no exemption not before existing created by enactment, and A's claim is not cognizable in a Civil Court.

(3) It is enacted that land-revenue shall not be leviable from any land held and entered in the land-registers as exempt. A claims to hold certain land as exempt on the ground that it has been so held by him, and is so entered in the land-register. This is an exemption expressly confirmed by enactment on the ground of its being shown in a public record, and A's claim is cognizable in a Civil Court.

(4) It is enacted that the Collector shall confirm existing exemptions of all lands shown in certain maps to be exempt. A claims exemption, alleging that his land is shown in the maps to be exempt. A's claim is cognizable in a Civil Court.

(5) It is enacted that assessment shall be fixed with reference to certain considerations and not with reference to others. This is not an enactment creating an exemption in favour of any individual or class, and no objection to an assessment under such an enactment is cognizable in a Civil Court.

Saving of certain suits.

5. Nothing in section 4 shall be held to prevent the Civil Courts from entertaining the following suits:

(*a*) suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue, on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount;

(*b*) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of revenue-survey or settlement or in any village-papers;

(*c*) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (*g*), shall be held to prevent the Civil Courts from entertaining suits, other than suits against Government, for possession of

any land being a whole survey-number or a recognized share of a survey-number;

[1] [and nothing in section 4 shall be held to prevent the Civil Courts in the districts mentioned in the Second Schedule hereto annexed from exercising such jurisdiction as, according to the terms of any law in force on the twenty-eighth day of March, 1876, they could have exercised over claims against Government—

(*a*) relating to any property appertaining to the office of any hereditary officer appointed or recognized under [2] Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village-officer or servant:

(*b*) to hold land wholly or partially free from payment of land-revenue:

(*c*) to receive payments charged on, or payable out of, the land-revenue.]

Bar of certain suits against Revenue-officers.

6. Revenue-officers shall not be liable to be sued for damages in any Civil Court for any act *bonâ fide* done or ordered to be done by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue-officer absconds or does not attend when called on by his official superior, and if the Collector of the district proceeds against him or his sureties for public money, papers or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him.

Punishment or prosecution of Revenue-officers no bar to civil remedies.

7. Nothing in any law for the time being in force which authorizes the punishment departmentally of any Revenue-officer for any offence or breach of duty, or which sanctions his prosecution criminally for such offence or breach, shall be held to bar any remedy which may be had in the Civil Court against such officer.

8 to 10. [*Suits against Revenue-officers; appeals from their proceedings; power for Local Government to call for record.*] *Rep. Act XV of 1880.*

Suits not to be entertained unless plaintiff has exhausted right of appeal.

11. No Civil Court shall entertain any suit against Government on account of any act or omission of any Revenue-officer unless the plaintiff first proves that, previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present.

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[1] This paragraph was added by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877), *infra*.

[2] The Bombay Hereditary Offices Act, Vol. II of this Code.

Power of Government to refer questions for decision of High Court.

12. If, in the trial or investigation of any suit, claim or objection which, but for the passing of this Act, might have been tried or investigated by a Civil Court, there arises any question on which the Governor General in Council or the Local Government desires to have the decision of the High Court, the Governor General in Council or the Local Government, as the case may be, may cause a statement of the question to be prepared, and may refer such question for the decision of the High Court of Judicature at Bombay.

The said High Court shall fix an early day for the hearing of the question referred, and cause notice of such day to be placed in the court-house.

The parties to the case may appear and be heard in the High Court in person or by their advocates or pleaders.

The High Court, when it has heard and considered the case, shall send a copy of its decision, with the reasons therefor, under the seal of the Court, to the Government by which the reference was made, and, subject to any appeal which may be presented to Her Majesty in Council, the case shall be disposed of conformably to such decision.

If the High Court considers that any such statement is imperfectly framed, the High Court may return it for amendment.

The costs (if any) consequent on any such reference shall be dealt with as the High Court in each case directs.

Power of Civil Judge to refer questions of jurisdiction to High Court.

13. If in any suit instituted, or in any appeal presented, in a Civil Court, the Judge doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

The High Court may order the Judge making the reference either to proceed with the case or to return the plaint.

The order of the High Court on any such reference shall be subject to appeal to Her Majesty in Council, and, save as aforesaid, shall be final.

Composition of Bench.

14. Every reference under section 12 or section 13 shall be heard by a Bench consisting of such number of Judges, not less than three, as the Chief Justice from time to time directs.

Amendment of section 32, Act XIV of 1869.

15. For section 32 of the Bombay Civil Courts Act, No. XIV of 1869, the following shall be substituted (namely) :—

[*Supra*, p. 104.]

Privileges of Government in suits defended by it.

16. Whenever any suit is brought in any District Court against Government, or against any Revenue-officer, and the Local Government undertakes the defence thereof, it shall be lawful for the Local Government, by certificate

signed by a Secretary thereto, to require—

(*a*) that such suit shall be tried by the District Judge himself, and shall not be transferred for trial to an Assistant Judge; and

(*b*) that the trial of any such suit shall have precedence over the trial of any other suit or other civil proceeding then pending in such Court;

and the Court shall give effect to every such requirement.

The privilege conferred on the Local Government by the clause (*b*) of this section shall, *mutatis mutandis*, apply to any appeal or special appeal against any decree in any such suit as is described in this section.

17. [*First clause. Revival of section 13 of Bom. Reg. XVII of 1827.*] *Repealed by Act XV of 1880; but the repeal does not operate in any scheduled district unless and until the Bombay Land-revenue Code (Bom. Act V of 1879) has been extended to such district.*]

[*Second clause. Operation of Bom. Reg. XVII of 1827 in sites of villages and towns.*] *Rep. Act XV of 1880.*

[*Third clause. Recovery of certain advances made by Local Government.*] *Rep. Act XV of 1850.*

SCHEDULE.

[ENACTMENTS REPEALED.]

Repealed by Act XII of 1891.

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[1] [THE SECOND SCHEDULE.]

The district of Ahmedabad.

The district of Kaira, exclusive of the Pánch Maháls.

The district of Broach.

The district of Surat, exclusive of the lapsed State of Mandvi, as described in the Schedule annexed to [2] Act X of 1848.

The district of Tanna.

The district of Kolába, exclusive of the lapsed State of Kolába mentioned in [2] Act VIII of 1853.

The district of Ratnágiri.

The district of Kanára.]

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[1] This Schedule was added by the Bombay Revenue Jurisdiction (Amendment) Act, 1877 (16 of 1877), *infra*. It is referred to in s. 5, *supra*.

[2] Acts 10 of 1848 and 8 of 1853 were repealed by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

ACT No. XV OF 1876.[1]

[THE BOMBAY MUNICIPAL DEBENTURES ACT, 1876.]

[*14th September, 1876.*]

An Act to amend the law relating to the transfer of Bombay Municipal Debentures, and to provide for their consolidation.

Preamble.

WHEREAS, under the [2] Bombay Municipal Act of 1865, the Justices of the Peace for the City of Bombay were empowered to mortgage for the purposes therein mentioned the rates and taxes imposed and levied under that Act; Bom. II of 1865.

and whereas, by section 255 of the same Act, it was enacted that any person entitled to any such mortgage might transfer his right and interest therein to any other person, and that every such transfer should be by deed duly stamped, wherein the consideration should be truly stated, and that every such transfer might be according to the form in Schedule K to the said Act annexed or to the like effect;

and whereas, in exercise of the said power, diverse mortgages of the said rates and taxes have been made, and the mortgagees have purported to transfer their mortgages to other persons, but such transfers have been by simple endorsement and not by deed duly stamped;

and whereas it is expedient to provide that such transfers may hereafter be made by endorsement, and to confirm the said transfers heretofore made, and to exempt the parties thereto from the penalties which they have incurred by reason of their failure to comply with the provisions of the said section and of the law relating to stamp-duties for the time being in force;

and whereas it is also expedient to provide for consolidating such mortgages in manner hereinafter mentioned and for renewing and sub-dividing mortgages so consolidated;

It is hereby enacted as follows:

Short title.

1. This Act may be called the Bombay Municipal Debentures Act, 1876.

Transfers of debentures to be by endorsement.

2. Every mortgage of rates and taxes, authorised to be made under the said [2] Bombay Municipal Act of 1865, or any subsequent Act, shall be transferable by endorsement on the instrument of mortgage [3]* * * *. Bom. II of 1865.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1876, Pt. V, p. 552, and for Proceedings in Council, *see ibid*, Supplement, pp. 714, 753 and 1003.

[2] *See* now the City of Bombay Municipal Act, 1888 (Bom. Act 3 of 1888), Vol. III of this Code.

[3] The words "and no such endorsement shall be chargeable with any stamp-duty" were repealed by the Indian Stamp Act, 1879 (1 of 1879).

3. Every transfer of any such mortgage heretofore made by endorsement shall be, and be deemed to have been, as valid as if this Act had been in force at the date of such transfer; and no stamp-duty shall be, or be deemed to have been, chargeable in respect of any such transfer; and no penalty shall be deemed to have been incurred by reason of any failure to comply with the provisions of the said section 255 or of the law relating to stamp-duties for the time being in force. Validation of former transfers by endorsement.

4. Any holder of two or more such instruments of mortgage may surrender them to the Municipal Corporation of the City of Bombay, and such Corporation shall accept the same, and shall (on receipt for each such instrument of such fee as the said Corporation may from time to time prescribe) grant to such holder, under the seal of the said Corporation, an instrument of mortgage in which the consideration stated shall be the aggregate amount of the considerations respectively stated in the instrument so surrendered. Power to consolidate debentures.

Every instrument so granted may be in the form in the Schedule hereto annexed or to the like effect.

5. The said Corporation shall, on the application of the holder of any instrument granted under the said [1] Bombay Municipal Act of 1865 or under this Act, and, on receipt of such fees as the said Corporation may from time to time prescribe in this behalf, renew or sub-divide the same. Power to renew and sub-divide.

Bom. II of 1865.

THE SCHEDULE ABOVE REFERRED TO.

WHEREAS *A B* of has surrendered to us, the Municipal Corporation of the City of Bombay, mortgages issued under the Bombay Municipal Act of 1865, bearing respectively the following numbers and dates (namely) [*set them out*], and securing sums amounting in the whole to Rs. . In consideration of the premises, we, the said Corporation, do hereby grant and assign unto the said *A B*, his representatives and assigns, such proportion of the rates and taxes comprised in the said mortgages as the said sum of Rs. bears to the whole sum for the time being borrowed upon the credit of the said rates and taxes. TO HOLD to the said *A B*, his representatives and assigns, from this day, until the said sum of Rs. with interest at the rate of per cent. per annum, shall be fully paid and satisfied.

Bom. II of 1865.

Given under our corporate seal this day of 187 .

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[1] *See* now the City of Bombay Municipal Act, 1888 (3 of 1888), Vol. III of this Code.

ACT No. XX OF 1876.[1]

[THE BHAUNAGAR ACT, 1876.]

[*16th December, 1876.*]

An Act to give better effect to certain agreements with the Thákur of Bhaunagar.

Preamble.

WHEREAS the villages mentioned in the Schedule hereto annexed (hereinafter called the scheduled villages) are the property of the Thákur of Bhaunagar, and were by the Treaty of Bassein, dated the thirty-first day of December, 1802, separated from the Native State or States known as the territory of Káthiáwád and ceded to the British Government;

and whereas, by [2] Regulation VI of 1816 of the Governor of Bombay in Council, the Regulations in force throughout the Presidency of Bombay were extended to the said villages, and such villages thereby became subject to the jurisdiction of the Revenue, Civil and Criminal Courts established in that Presidency;

and whereas the said Thákur of Bhaunagar is also the proprietor of divers villages, forming part of the said territory, and hereinafter called the Káthiáwád villages;

and whereas the British Government have exercised certain powers of government over the said territory, but such territory has never been treated as being British territory, nor as having been vested in the East India Company, nor in Her Majesty the Queen of Great Britain and Ireland and Empress of India, and the said Káthiáwád villages have consequently never been subject to the laws in force in the Presidency of Bombay;

and whereas in the year 1820 the British Government established a Political Agency for the said territory of Káthiáwád;

and whereas in the year 1857 the said Thákur was, by an order of the British Government, invested in respect of the same villages with certain powers of sovereignty limited by and subject to the rules laid down for the government and conduct of the said Káthiáwád Political Agency;

and whereas, for divers reasons of State affecting the welfare of British India, the British Government became desirous of ceding to the Thákur of Bhaunagar the scheduled villages, to be held by him on the same conditions

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[1] For Proceedings in Council relating to the Bill which was introduced and passed at the same meeting of the Council, *see* Gazette of India, 1876, Supplement, p. 1351.

[2] Bom. Reg. 6 of 1816 was repealed by Bom. Reg. 1 of 1827.

as those on which he holds the Káthiáwád villages, and for that purpose certain agreements were made and certain notifications published which were intended to operate as a cession of the scheduled villages;

and whereas on the twenty-ninth day of January, 1866, the Governor of Bombay in Council published a notification declaring that, in accordance with the agreement last hereinbefore recited, the scheduled villages were from and after the first day of February, 1866, removed from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency and transferred to the supervision of the said Political Agency in Káthiáwád on the same conditions as to jurisdiction as the said Káthiáwád villages;

and whereas the intention of the said agreements and notifications was that the villages comprised therein should be ceded to and vested in the Thákur of Bhaunagar, to be held by him on the terms on which he holds the Káthiáwád villages;

and whereas ever since the first day of February, 1866, the scheduled villages have been governed according to the intentions of the said agreements, and acts of executive authority have been done, proceedings taken and decrees and sentences passed by the Thákur of Bhaunagar and his officers, and by the officers of the said Political Agency, and by the Courts of Justice appointed to exercise jurisdiction within the limits of the said Political Agency;

and whereas it now appears that such agreements and notifications were not worded so as to express their true intention, and that the scheduled villages did not thereby cease to be British territory, or to be subject to the laws in force in the Presidency of Bombay;

and whereas by a notification dated the fifth day of December, 1876, after reciting to the effect above recited and reciting that the Secretary of State for India had, on behalf of Her Majesty the Queen of Great Britain and Empress of India, given his sanction to the cession intended to be thereby effected, the Governor General in Council, with the sanction aforesaid, did thereby cede and grant to the said Thákur of Bhaunagar, his heirs and successors, the said scheduled villages, to hold the same unto the said Thákur, his heirs and successors, on the terms and subject to the rules on and subject to which he holds the said Káthiáwád villages; but it was thereby provided that in case the said Thákur, his heirs or successors, should commit any acts of misgovernment which, in the opinion of the Governor General in Council, rendered it inexpedient that the said Thákur, his heirs and successors, should continue to hold the said scheduled villages, the Governor General in Council might resume the villages thereby ceded and re-annex the same to Her Majesty's dominions;

and whereas it is expedient (so far as relates to any past or future proceedings in British India) to ratify the aforesaid acts, proceedings and sentences of the Thákur of Bhaunagar and the officers and Courts aforesaid, and to indemnify the said Thákur and officers against any liability in respect thereof, and to provide that no title to property shall be disturbed by any act, proceeding or sentence of any other authority;

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bhaunagar Act, 1876.

Local extent. Commencement.

It extends only to British India; and

it shall come into force at once.

Scheduled villages excluded from jurisdiction of Bombay Courts.

2. The said scheduled villages shall be deemed to have been, on and after the said first day of February, 1866, excluded from the jurisdiction of the Revenue, Civil and Criminal Courts of the Bombay Presidency.

3. [*Validation of acts done after 1st February, 1866.*] *Rep. Act XVI of 1895.*

Saving of personal jurisdiction of Courts of British India.

4. Nothing in this Act shall affect any jurisdiction which any Court of Justice in British India may for the time being be entitled to exercise over persons resident or being beyond the limits of British India.

SCHEDULE.

Bhaunagar Táluqa.

Bhaunagar.	Málanka.	Háthab.
Wadwá.	Bhutesar.	Khadsuliu.
Ruhá.	Bhumlí.	Bhadbadiu.
Akwárá.	Ratanpur Juná.	Alápur.
Adhiwárá.	Ratanpur Nuwá.	Thalsar.
Tarsamía.	Koliak.	Lákhanka.
Jaspará.	Kobri.	Sultánpur.
Phulsar.	Bhurí.	Wávri.
Karmadiu.	Bhundariu.	Rámpura.
Surká.	Churi.	Bhenswari. } (*waste*).
Tarak Pálrí.	Sánkrásar.	Jhánjrá. } (*waste*).
Nárí.	Bhádole.	
Budhel.	Nágdhaníba.	

Sihór Táluqa.

Sihór.	Táná.	Ratanpur *near* Táná.
Usrad	Bordi.	Wadiu.
Agiáli.	Kájáwadar.	Waláwad.

SCHEDULE—*continued.*

Megwadar.	Rájpura.	Surká.
Ghangli.	Khakhriu.	Jámbálu.
Nesra.	Kardej.	Kuchotiu (*waste*).

Chirora (*waste*).

New Villages.

Gundi.	Trápaj.	Píthalpur.
Mándwá.	Bapárá.	Khántari.
Sosia.	Pánchpíplá.	Deogána.
Paniálí.	Rájpura.	Thordí.

Khadarpur Mitiverdi.

Inám Villages.

Wartej.	Sámpura.	Sodwadra.
Sidhsar.	Phariádku.	Sedhawadar.

Kálví (*waste*).

DHANDUKA PARGANA.

Pátna Táluqa.

Pátna.	Kánutalao.	Dantretía.
Bharbír.	Ratanwau.	Samandiála.
Chakampur.	Keriá.	Kariáni.
Sarwui.	Jamrála.	Láthídhar.
Jhinjhawadar.	Ujalwau.	Weláwadar.
Pátí.	Jotingra.	Vírdhi *or* Rájghar.
Keria *near* Pátí.	Shírthali.	Sajelí.
Bhámbhan.	Dhíkwáli.	Oteriá.
Samandeála, 2.	Wajelí.	Sándherá.
Tájpur.	Lundrá.	Nágalpur.

Málpur.

RANPUR PARGANA.

Botád Táluqa.

Botád.	Dánkniá.	Kániád.
Hardar.	Khankoí.	Rájpura.
Ṣírwánıu.	Tuṛkhá.	Juriá.

ACT No. XIV OF 1877.[1]

[THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1877.]

[*28th June, 1877.*]

An Act to relieve from incumbrances the estates of Thákurs in Broach and Kaira.

Preamble. Rep. Act XXI of 1881.

1 to 38. [*Application and preliminary inquiry; Order of management; Proof of debts; Scheme for liquidation; Proceedings subsequent to sanction of liquidation scheme; Appeal and revision; Miscellaneous.*] *Rep. Act XXI of 1881.*

Amendment of Bombay Act VI of 1862.

39. [2] * Whereas doubts have been raised as to the validity of [3] Bombay Act No. VI of 1862 (*for the amelioration of the condition of taluqdars in the Ahmadabad Collectorate, and for their relief from debt*) so far as it purports to affect the High Court of Judicature at Bombay;

for the purpose of precluding such doubts, it is hereby [2] * enacted that the said Act, so far as it purports to affect the said High Court, shall be deemed to be and to have been valid.

Taluqdari Settlement-officer to be — deemed officer under Bombay Act VI of 1862, section 1; assistant to certain Collectors.

40. [4] [The Taluqdari Settlement-officer mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7,] for the time being shall, unless the Local Government in any case otherwise directs, be— XXI of 1881.

(*a*) deemed to be an officer appointed under section 1 of the said [3] Bombay Act No. VI of 1862 to manage all estates with respect to which a declaration is or has been made and published under the said section;

(*b*) an assistant to the respective Collectors of Ahmadabad, Kaira and Broach.

Acts of Taluqdari Settlement-officer valid.

41. Nothing heretofore done by any Taluqdari Settlement-officer shall be deemed to be or to have been invalid by reason only of his not having been duly appointed,—

(*a*) under section 1 of the said [3] Bombay Act No. VI of 1862 to manage any estates with respect to which a delaration has been made under the said section, or

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[1] For Statement of Objects and Reasons *see* Gazette of India, 1877, Pt. V, p. 16, and for Proceedings in Council, *see ibid*, Supplement, pp. 87, 126 and 1863.

The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[2] The words "and" in paragraph 1 and "further" in the second paragraph were repealed by the Repealing and Amending Act, 1894 (4 of 1894), *infra*.

[3] Vol. II of this Code.

[4] These words and figures were substituted for the words "The said Taluqdari Settlement-officer" by s. 2 of the Broach and Kaira Incumbered Estates Act, 1881 (21 of 1881), *infra*.

(*b*) to be a manager under [1] * * [2] Act No. XV of 1871, or

(*c*) to be an assistant to the respective Collectors of Ahmadabad, Kaira and Broach.

ACT No. XVI OF 1877.[3]

[*9th August, 1877.*]

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.

WHEREAS it is expedient to exempt from the operation of the fourth section of the Bombay Revenue Jurisdiction Act, 1876, certain suits instituted in the districts mentioned in the Schedule hereto annexed; It is hereby enacted as follows:— Preamble.

X of 1876.

1. To section 5 of the said Act the following clause shall be added, namely:— Addition to section 5, Act X of 1876.

[*Supra*, p. 125.]

2. The following Schedule shall be added to the said Bombay Revenue Jurisdiction Act, 1867, namely:— Schedule added to Act X of 1876.

[*Supra*, p. 127.]

ACT No. IX OF 1879.[4]

[THE BURMA COAST-LIGHTS ACT, 1879.]

[*23rd May, 1879.*]

An Act to amend the law relating to Coast-lights in the eastern part of the Bay of Bengal.

WHEREAS it is expedient to increase the coast-light dues paid under the provisions of [5]Act No. XIII of 1867 (*An Act to provide for the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal*) and to render chargeable with coast-light dues certain vessels which are not now so chargeable; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. This Act may be called the Burma Coast-lights Act, 1879; Short title.

It shall come into force on the first day of July, 1879; Commencement.

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[1] The words "the said" were repealed by the Repealing and Amending Act, 1894 (4 of 1894), *infra*.

[2] Act 15 of 1871 was repealed by s. 2 of this Act.

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 156; and for Proceedings in Council, *see ibid*, Supplement, pp. 1567, 1687, 2124, 2218 and 2272.

[4] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 42; and for Proceedings in Council, *see ibid*, Supplement, pp. 17, 48 and 528.

[5] Act 13 of 1867 was repealed by s. 2 of this Act.

Local extent.

and it shall extend to the territories respectively administered by the Governors of Fort St. George and Bombay in Council, the Lieutenant-Governor of Bengal and the Chief Commissioners of British Burma[1] and the Andaman and Nicobar Islands.

But nothing herein contained shall apply to any vessel belonging to or in the service of Her Majesty or the Government of India, or to any vessel of war belonging to any Foreign Prince or State.

Repeal.

2. Act No. XIII of 1867 (*to provide for the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal*) is hereby repealed.

But any appointment made under the said Act shall be deemed to have been made under this Act.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Customs-Collector" means a Customs-Collector appointed under the [2]Sea Customs Act, 1878, and includes any person appointed by the Local Government by name or in virtue of his office to discharge the functions of a Customs-Collector under this Act at any port: VIII of 1878

"vessel" includes anything made for the conveyance by water of human beings or of property:

"master," when used in relation to any vessel, means any person (except a pilot or harbour-master) having, for the time being, the charge or control of such vessel:

"voyage" means the whole distance between a vessel's place of departure and her final place of arrival; but the return of a vessel from any place shall, notwithstanding the terms of any charter-party, be deemed a distinct voyage.

Coast-light dues.

Coast-light dues payable in respect of vessels of fifty tons.

4. For the purpose of establishing and maintaining coast-lights in the eastern part of the Bay of Bengal, a toll, hereinafter called "coast-light dues," shall be paid in respect of every vessel of the burden of fifty tons and upwards

[1] *For* "British Burma", *read now* Lower Burma, *see* the Burma Laws Act, 1898 (13 of 1898), s. 7, Burma Code. The Chief Commissioner is now Lieutenant-Governor of Burma. *see* Proclamation, dated 9th April, 1897, in Gazette of India, 1897, Pt. I, p. 261.

[2] Genl. Acts, Vol. II.

making any voyage mentioned in the Schedule hereto annexed, at the rate of one anna and six pie per ton of burden:

Provided that such vessel sails from or enters during the course of, or at the termination of, any such voyage a port in British India, or takes in, or discharges, cargo off the coast of British India.

5. The said coast-light dues shall become due and payable— Dues when payable.

(*a*) in the case of a vessel clearing out of a port in British India upon any such voyage—previous to the grant of any port-clearance;

(*b*) in the case of a vessel entering a port in British India in the course, or at the termination, of any such voyage—immediately upon her entering such port:

Provided that the said dues shall not be levied more than once on any vessel in the course of the same voyage.

6. The Governor General in Council may from time to time, by notification in the Gazette of India, reduce or raise the rate of coast-light dues in respect of all vessels or any particular class of vessels: Power to vary rates of dues.

Provided that such rate shall not in any case exceed the rate fixed by section 4. Proviso.

7. The Customs-Collector shall collect the coast-light dues, and shall grant to the person paying the same a voucher in writing under his hand, setting forth the name of his office, the port at which the coast-light dues are paid, the amount so paid, the name, tonnage and other proper description of the vessel in respect of which such payment is made, and the voyage on which she is or has been bound. Collection of dues. Voucher to be given.

8. Within twenty-four hours after the arrival within a port of any vessel chargeable with coast-light dues, the master of such vessel shall give notice of such arrival to the Customs-Collector. Master to report arrival.

9. In order to ascertain the tonnage of any vessel chargeable with coast-light dues, the following rules shall be observed:— Tonnage of vessel chargeable with coast-light dues how ascertained—if registered.

(*a*) If such vessel be a British registered vessel or a vessel registered under [1]Act No. X of 1841 or [1]Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, the Customs-Collector may require the owner or master of such vessel, or any other person having possession of her register, to produce such register for

[1] For Acts 10 of 1841 and 11 of 1850, *see* Genl. Acts, Vol. I.

inspection. If any such owner, master or other person neglects or refuses to produce such register, or otherwise to satisfy the Customs-Collector as to what is the true tonnage of the vessel in respect of which such coast-light dues are payable, he shall be punished with fine which may extend to one hundred rupees, and the Customs-Collector may cause such vessel to be measured and the tonnage thereof to be ascertained; and in such case the owner or master of such vessel shall also be liable to pay the expenses of such measurement.

If not registered.

(*b*) If such vessel be not a British registered vessel or a vessel registered under [1]Act No. X of 1841 or [1]Act No. XI of 1850, or under any other law for the time being in force for the registration of vessels in India, and the owner or master thereof fails to satisfy the Customs-Collector as to what is her true tonnage according to the mode of measurement prescribed by the law in force for the time being for regulating the measurement of British registered vessels, the Customs-Collector shall cause such vessel to be measured and the tonnage thereof, according to the mode aforesaid, to be ascertained; and in such case the owner or master of such vessel shall be liable to pay the expenses of such measurement.

On refusal to pay dues or expenses, the Collector may distrain and sell.

10. If the master of any vessel refuses or neglects to pay to the Customs-Collector on demand by him the amount of any dues or expenses payable in respect of such vessel, under this Act, the Customs-Collector may distrain or arrest such vessel and the tackle, apparel and furniture belonging thereto, or any part thereof, and detain the same until the amount of such dues or expenses is paid;

and in case any part of such dues or expenses, or of the costs of the distress or arrest, or of the keeping of the same, remains unpaid for the space of five days next after any such distress or arrest so made, the Customs-Collector may cause the vessel or other thing so distrained or arrested to be sold, and with the proceeds of such sale may satisfy such dues, expenses and costs (including the costs of sale) remaining unpaid, and shall render the surplus (if any) to the master of such vessel upon demand.

No port-clearance to be granted until dues, etc., are paid.

11. The officer of Government whose duty it is to grant a port-clearance for any vessel shall not grant such port-clearance until her master or some other person has paid, or secured to the satisfaction of such officer, the amount of all dues, expenses and costs with which such vessel is chargeable under this Act, and of any fine to which any person is liable for anything done by him in contravention of this Act.

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[1] For Acts 10 of 1841 and 11 of 1850, *see* Genl. Acts, Vol. I.

12. The master of any vessel departing from or entering any port in British India upon, or in the course of, or at the termination of, any voyage, shall, upon the demand of the Customs-Collector, specify upon what voyage she is or has been bound.

Master to specify on demand voyage on which vessel is bound.

13. If the master of any vessel evades, or attempts to evade, the payment of any coast-light dues, expenses or costs payable in respect of such vessel under this Act, he shall be punished with fine which may extend to two hundred rupees.

Penalty for evading payment of dues, etc.

Determination of Disputes under Act.

14. If any dispute arises as to whether any vessel is chargeable with any coast-light dues, expenses or costs under this Act, or as to the amount of such dues, expenses or costs, such dispute shall, upon application made in that behalf by either of the disputing parties, be heard and determined in the towns of Calcutta, Madras and Bombay, by a Presidency Magistrate, and elsewhere, by any Magistrate exercising at the place where the dispute arises powers under the [1] Code of Criminal Procedure, not less than those of a Magistrate of the second class. All decisions under this section shall be final.

Magistrate to decide disputes.

Prosecutions under other Laws.

15. Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act: Provided that no person shall be punished twice for the same act or omission.

Saving of prosecutions under other laws.

Statement of Receipts and Expenditure.

16. The Governor General in Council shall, on or before the first day of October in each year, publish in the Gazette of India a statement showing the amount received on account of coast-light dues during the year ending on the thirty-first day of March last preceding, and the amount expended during the same period on the establishment and maintenance of coast-lights in the eastern part of the Bay of Bengal.

Statement of receipts and expenditure to be published.

17 (WITH PREAMBLE). [*Amendment of Indian Ports Act, 1875.*] *Rep. Act X of 1889.*

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[1] *See* now Act 5 of 1898, Genl. Acts, Vol. V.

SCHEDULE.

(*See section 4.*)

1. A voyage to or from Chittagong or any place west of the longitude of Chittagong—	(*a*) from or to any port in [1] British Burma, or (*b*) from or to any port in the Andaman and Nicobar Islands or any place east of the longitude of Mergui, by a course passing between the northern extremity of the Andaman Islands and the coast of [1] British Burma.
2. A voyage to or from any port in [1] British Burma—	from or to any other port in [1] British Burma.

except voyages to or from Moulmein, from or to Tavoy or Mergui, or to or from Tavoy, from or to Mergui.

3. A voyage to or from Rangoon and any port in [1] British Burma west of the longitude of Rangoon—	from or to any place east of the longitude of Mergui.
4. A voyage to or from any port in [1] British Burma other than Tavoy and Mergui—	from or to any port in the Andaman and Nicobar Islands.

ACT No. XVI OF 1879.[2]

[THE TRANSPORT OF SALT ACT, 1879.]

[*30th September, 1879.*]

An Act to restrict the transport of Salt by Sea.

Preamble. WHEREAS it is expedient to restrict the transport of salt by sea in manner hereinafter appearing ; It is hereby enacted as follows :—

Short title. **1.** This Act may be called the Transport of Salt Act, 1879 :

Local extent. It extends to the western coast of British India north of Cochin, and to the sea within a distance of a marine league from such coast ;

[3] * * * * *

Penalties for carrying salt in certain vessels. **2.** When any salt is carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

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[1] For "British Burma" *read now* Lower Burma, *see* the Burma Laws Act, 1898 (13 of 1898), s. 7, Burma Code.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 16 ; for First Report of the Select Committee, *see ibid*, p. 94*a* ; and for Proceedings in Council, *see ibid*, Supplement, pp. 88, 126, 493, and *ibid*, 1879, p. 1223.

[3] The words "and it shall come into force at once" were repealed by the Repealing an Amending Act, 1901 (11 of 1901), s. 3, and Third Schedule.

Exceptions.

3. Nothing in section 2 applies to—

Mad. IV of 1889. Bom. II of 1890.

(*a*) salt covered by a permit granted under [1][Chapter V of the Madras Salt Act, 1889, or Chapter V of the [2]Bombay Salt Act, 1890, or the corresponding law for the time being in force in the territories administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council, as the case may be];

(*b*) salt covered by a pass granted by any officer whom the Governor of Bombay in Council may appoint in this behalf;

(*c*) such amount of salt carried on board any vessel for consumption by her crew or by the passengers or animals (if any) on board as the Governor of Bombay in Council may, from time to time, exempt from the operation of section 2.

Power of stoppage, search and arrest.

4. When any officer empowered by the [3][Chief Customs authority] whether by name or office, to act under this section has reason to believe, from personal knowledge or from information taken down in writing, that any salt is being carried, or has within the twenty-four hours next before the requirement first hereinafter mentioned been carried, in any vessel so as to render the owner or master of such vessel liable to the penalties prescribed by section 2, he may require such vessel to be brought-to, and thereupon may—

(*a*) enter and search the same;

(*b*) require the master of such vessel to produce any documents in his possession relating to such vessel or the cargo thereof;

(*c*) seize such vessel if the said officer has reason to believe it liable to confiscation under this Act, and cause it to be brought with its crew and cargo into any port in British India; and

(*d*) where salt is found on board such vessel, search and arrest without a warrant any person on board the same who such officer has reason to believe is punishable under section 2.

Penalties for resisting officer.

5. Any master of a vessel refusing or neglecting to bring-to or to produce his papers when required to do so by an officer acting under section 4, and any person obstructing any such officer in the performance of his duty, may be arrested by such officer without a warrant, and shall be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

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[1] These words were substituted for the words "section twenty-eight or section thirty-one of the Act of the Governor of Bombay in Council, No. 7 of 1873, or by a rawana granted under Madras Regulation 1 of 1805, section 11, clause third," by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[2] Vol. III of this Code.

[3] These words were substituted for the words "Governor of Bombay in Council" by Sch. Pt. I of the Decentralization Act, 1914 (4 of 1914), Genl. Acts, Vol. VIII.

Confiscation of vessel and cargo.

6. Every vessel in which salt is carried so as to render the owner or master of such vessel liable to the penalties prescribed by section 2, the cargo on board such vessel and all salt in respect of which an offence under this Act has been committed shall be liable to confiscation.

The confiscation of any vessel under this section shall include her tackle, apparel and furniture.

Confiscations under this section may be adjudged by the Chief Customs authority, or by such other officer as the Local Government may, from time to time, appoint in this behalf.

Whenever any Customs-officer is satisfied that any article is liable to confiscation under this section, he may seize such article, and shall at once report the seizure to his superior officer for the information of the Chief Customs authority or such other officer as aforesaid, and such authority or officer may, if satisfied on such report, or after making such inquiry as it or he thinks fit, that the article so seized is liable to confiscation, either declare it to be confiscated, or impose a fine in lieu thereof not exceeding the value of the article.

Jurisdiction.

7. For the purpose of the adjudication of penalties under section 2 or section 5, every offence thereunder may be deemed to have been committed within the limits of the jurisdiction of the Magistrate of any place where the offender is found, or to which, if arrested under section 4 or section 5, he may be brought.

Power to exempt from operation of Act.

8. The Governor General in Council may from time to time, by notification in the Gazette of India, exempt the carriage of salt within any local limits or in any class of vessels from the operation of this Act, and by like notification, again subject such carriage to the operation of this Act.

THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Commencement.
   Local extent.
2. Construction.
2A. Jágirdárs, etc., to be deemed Subordinate Judges.

CHAPTER II.

OF THE HEARING OF CERTAIN SUITS BY SUBORDINATE JUDGES.

SECTIONS.

3. Application of this Chapter.

4. Certain suits to be instituted in Courts of first class Subordinate Judges.

5. Subordinate Judges not to act as Judges of Small Cause Courts.

6. Jurisdiction of Subordinate Judge and Small Cause Court.

7. Summons to be for final disposal of suit.

Court to examine defendant as witness.

8, 9. [*Repealed.*]

10. No appeal to lie.

CHAPTER III.

OF SUITS AND OTHER PROCEEDINGS TO WHICH AGRICULTURISTS ARE PARTIES.

10A. Power of Court to determine nature of transactions and to admit evidence of an oral agreement or statement.

11. Agriculturists to be sued where they reside.

12. History of transactions with agriculturist-debtors to be investigated.

13. Mode of taking account.

13A. In certain cases rent may be charged in lieu of profits.

14, 15. [*Repealed.*]

15A. Mortgagor entitled to decree for redemption though time fixed by mortgage has not arrived or debt has not been paid.

15AA. Power of Court to name some future date for payment by the mortgagor.

15B. Power to order payment by instalments in case of decree for redemption, foreclosure or sale.

Power to continue the mortgagee in possession.

15C. Power to order payment by instalments in suits for possession of mortgaged property.

15D. Mortgagor may sue for accounts.

16. Agriculturist-debtors may sue for accounts.

Amount of debts in such cases to be determined according to foregoing provisions.

SECTIONS.

17. Decree under section 16 may provide for payment by instalments.
Execution of decrees under this section.
18. Payment into Court in cases under section 16.
19. [*Repealed.*]
20. Power to fix instalments in execution.
21. Arrest and imprisonment in execution of decree for money abolished
22. Immoveable property exempted from attachment and sale unless specifically pledged.
22A. Power of Collector to set aside sale.
23. Chapter not to apply to Village-munsifs' Courts.

CHAPTER IV.

OF INSOLVENCY.

24. Subordinate Judges to have jurisdiction in agriculturists' cases.
25. Agriculturists may apply for adjudication in cases not provided for by Code.
26. Modification of section 351 of the Code.
27. Receiver.
28. Proof of debts.
29. Immoveable property not to vest in Receiver, but may be managed for benefit of creditors.
30. Secured debts.
31. Insolvent incompetent to sell, etc., property dealt with under sections 29 and 30.
32. Scheduled debts discharged.
33. Appeals barred.

CHAPTER V.

OF VILLAGE-MUNSIFS.

34. Appointment of Village-munsifs.
35. Suits triable by them.
Jurisdiction of other Courts excluded.
Proviso.
36. District Judge's power of revision.
37. Power of Local Government to make rules.

CHAPTER VI.

Of Conciliation.

Sections.

38. Appointment of Conciliators.
39. Matters which may be brought before Conciliator.
40. Procedure thereupon.
Day for attendance may from time to time be postponed.
41. When all parties appear, Conciliator to endeavour to reconcile them.
42. Conciliator to hear statements of witnesses, etc.
43. Any agreement arrived at to be reduced to writing.
44. Procedure when agreement finally disposes of case and in other circumstances.
45. Procedure where agreement is for reference to arbitration.
46. Certificate to be given to applicant if conciliation fails.
47. Suit, or application for execution, not to be entertained by Civil Court unless such certificate is produced.
48. Allowance to be made in period of limitation.
48A. [*Repealed.*]
49. Local Government to make rules.

CHAPTER VII.

Superintendence and Revision.

50. District Judge to inspect, etc.
51. District Judge may withdraw case from Conciliator or Subordinate Judge,
or sit with Subordinate Judge as a Bench for trial of any case.
52. Appointment of Assistant or Subordinate Judges to aid District Judge.
53. Of revision.
54. Special Judge.

CHAPTER VIII.

Registration by Village-registrars.

55. Appointment of Village-registrars.
56. Instruments executed by agriculturist not to be deemed valid unless executed before a Village-registrar.

SECTIONS.

57. Such instruments to be written by, or under the superintendence of a Village-registrar and executed in his presence.
Attestation of such instruments.
58. Registration of instruments by Village-registrars.
59. Consideration to be fully stated in every instrument executed before a Village-registrar.
Previous instruments to be produced.
Production of copy of previous instrument when to be permitted.
60. Registration under this Act to be deemed equivalent to registration under Indian Registration Act, 1877.
61. Superintendence of Village-registrars and custody and destruction of their records.
62. Exemption of instruments to which Government or any officer of Government is a party.
63. Power of Local Government to make rules.

CHAPTER VIIIA.

REGISTRATION OF INSTRUMENTS REFERRED TO IN SECTION 17 OF THE INDIAN REGISTRATION ACT, 1877.

63A. Mode of execution by agriculturists of instruments required to be registered under Act III of 1877.

CHAPTER IX.

OF RECEIPTS AND STATEMENTS OF ACCOUNT.

64. Agriculturists entitled to written receipts;
65. " " to annual statements of account:
66. " " to have account made up from time to time in a pass-book.
67. Penalty for contravention of sections 64 to 66.

CHAPTER X.

LEGAL PRACTITIONERS.

68. Pleaders, etc., excluded in certain cases.
69. Power of Court to appoint pleader for agriculturist.

CHAPTER XI.

MISCELLANEOUS.

SECTIONS.

70. Mortgages, etc., to be valid only when written.
71. Bar of application of section 258, Act XIV, 1882.
71A. Rate of interest allowable on taking an account.
72. Limitation.
73. [*Repealed.*]
73A. Certain agricultural produce exempted from attachment, etc.
74. Civil Procedure Code to apply in Subordinate Judges' Courts.
74A. Co-operative credit societies.
75. Additional power to make rules.
76. Rules to be published.

ACT No. XVII OF 1879.[1]

[THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1879.]

[*29th October, 1879.*]

An Act for the relief of Indebted Agriculturists in certain parts of the Dekkhan.

WHEREAS it is expedient to relieve the agricultural classes in certain parts of the Dekkhan from indebtedness; It it is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be cited as the [2]Dekkhan Agriculturists' Relief Act, 1879: and it shall come into force on the first day of November, 1879. Short title. Commencement.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1879, Pt. V, p. 796; for Report of the Select Committee, *see ibid*, p. 939; for Proceedings in Council relating to the Bill it was originally proposed to introduce, *see ibid*, 1878, Supplement, p. 1028; and for Proceedings relating to the Bill which included the provisions of both this Bill and the Bill which the Local Council had introduced, *see ibid*, 1879, Supplement, pp. 595, 833, 873 and 1327.

[2] Acts 17 of 1879, 23 of 1881 and 22 of 1882 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1882—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*. The Acts of 1879 to 1882 and Act 23 of 1886 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1886—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*. The Acts of 1879 to 1886 and Act 6 of 1895 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1895 *see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*. The Acts of 1879 to 1895 and Bom. Act 1 of 1902 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1876 to 1902—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1902 (Bom. Act 1 of 1902), Vol. IV of this Code.

Local extent.

[1][This section and] sections 11, 56, 60 and 62 extend to the whole of British India. The rest of this Act extends only to the districts of Poona, Sátára, Sholápur and Ahmednagar, [2][but may, from time to time, be extended wholly or in part by the Local Government, [3]* * * * * * * * * * * to any other district or districts in the Presidency of Bombay,] [4][or to any part or parts of any other such district or districts].

Construction.

[5][**2.** In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely :—

1st.—"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

Explanations.—(*a*) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid, or who is prevented from so earning his livelihood or engaging in agriculture by age or bodily infirmity or by necessary absence in the military service of Her Majesty, does not thereby cease to be an agriculturist within this definition.

(*b*) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

2nd.—In Chapters II, III, IV and VI, and in section 69, the term "agriculturist," when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject

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[1] These words were inserted by s. 3 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*, and are to be deemed to have always been inserted.

[2] These words were added by s. 3 of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[3] The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

[4] These words were added by s. 4 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[5] This section was substituted by s. 5, *ibid.*

The original section was as follows :—

"2. In this Act, unless there is something repugnant in the subject or context,—

(1) 'money' includes agricultural produce, implements and stock :

(2) 'agriculturist' means a person who earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts; and every agriculturist shall be deemed to 'reside' where he so earns his livelihood."

of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.

3rd.—An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or personally engages in agricultural labour as aforesaid.

4th.—"Money" shall be deemed to include agricultural produce, implements and stock.

5th.—"Lease" shall be deemed to include a counterpart, kabuliyat, an undertaking to cultivate or occupy, and an agreement to lease.

6th.—"Standing crops" shall include crops of all sorts attached to the soil, and leaves, flowers, and fruits upon, and juice in, trees and shrubs.]

[1][*7th.*—For the purposes of Chapters VIII and VIII-A an instrument or a copy of an instrument drawn up on a printed form by or under the superintendence of a village-registrar or of a sub-registrar shall be deemed to be an instrument or copy written or made by or under the superintendence of such registrar or sub-registrar. In this clause the term 'printed form' shall be deemed to include a form prepared by any mechanical copying press.]

Jagirdars, etc., to be deemed Subordinate Judges.

[2][**2A.** Every Jagirdar and other authority invested with powers under [3]Bombay Regulation XIII of 1830 and [3]Act XV of 1840 shall, for the purposes of this Act, be deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct.]

CHAPTER II.

Of the Hearing of certain Suits by Subordinate Judges.

Application of this Chapter.

3. The provisions of this Chapter shall apply to—

(*a*) suits for an account, [4][whatever be the amount or value of the subject-matter thereof,] instituted [5]* * * * * by an agriculturist in the Court of a Subordinate Judge under the provisions hereinafter contained, and

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[1] Clause seventh was added by the Bombay Repealing and Amending Act, 1910 (Bombay Act 1 of 1910), Vol. V of this Code.

[2] Section 2A was inserted by s. 4 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[3] *Supra*.

[4] These words were inserted by s. 5 of Act 22 of 1882, *infra*.

[5] The words and figures "on or after the first day of November, 1879," were repealed by First Schedule of the Repealing and Amending Act, 1895 (16 of 1895).

(*b*) suits of the descriptions next hereinafter mentioned [1] * * * * * *—

(1) when such suits are heard by Subordinate Judges of the first class and the subject-matter thereof does not exceed in amount or value five hundred rupees, or

(2) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof does not exceed in amount or value one hundred rupees, or

(3) when such suits are heard by Subordinate Judges of the second class and the subject-matter thereof exceeds one hundred rupees, but does not exceed five hundred rupees, in amount or value, and the parties to the suits agree that such provisions shall apply thereto.

The descriptions of suits referred to in clause (*b*) are the following, namely :—

(*w*) suits for the recovery of money alleged to be due to the plaintiff—

on account of money lent or advanced to, or paid for, the defendant, or

as the price of goods sold, or

on an account stated between the plaintiff and defendant, or

on a written or unwritten engagement for the payment of money not hereinbefore provided for ;

(*x*) suits for recovery of money due on contracts other than the above and suits for rent or for moveable property, or for the value of such property, or for damages ; and

(*y*) suits for foreclosure or for the possession of mortgaged property, or for sale of such property, or for foreclosure [2] [and] sale, when the defendant, or any one of the defendants, [3] * * * * * * is an agriculturist ; and

(*z*) suits for the redemption of mortgaged property when the plaintiff, or, where there are several plaintiffs, any one of the plaintiffs, is an agriculturist.

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[1] The words "and instituted on or after the same date" were repealed by Act 16 of 1895, *infra*.

[2] The word "and" was substituted for "or" by s. 5 of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[3] The words "not being merely a surety for the principal debtor" were repealed by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

4. Where a Subordinate Judge of the first class and a Subordinate Judge of the second class have ordinary jurisdiction in the same local area, every suit referred to in section 3, clause (*b*), and instituted in such local area, shall, if the amount or value of the subject-matter of such suits exceeds one hundred rupees and does not exceed five hundred rupees, be instituted in the Court of the Subordinate Judge of the first class.

Certain suits to be instituted in Courts of first class Subordinate Judges.

XIV of 1869. **5.** Notwithstanding anything contained in the [1] Bombay Civil Courts Act, 1869, section 28, no Subordinate Judge shall be invested with the jurisdiction of a Judge of a Court of Small Causes [2] * * * * * *.

Subordinate Judges not to act as Judges of Small Cause Courts.

6. The Local Government may, from time to time, by notification in the local Gazette, direct that any class of suits which a Subordinate Judge would be precluded from hearing by section 12 of [3] Act XI of 1865 (*to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature*), shall be heard and determined by him and not otherwise, and may, by a like notification, cancel any such direction.

Jurisdiction of Subordinate Judge and Small Cause Court.

7. In every case in which it seems to the Court possible to dispose of a suit at the first hearing, the summons shall be for the final disposal of the suit.

Summons to be for final disposal of suit.

In every suit the Court shall examine the defendant as a witness unless, for reasons to be recorded by it in writing, it deems it [4] [clearly] unnecessary so to do.

Court to examine defendant as witness.

[5] [*Explanation.*—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement.]

8. [*Written statements.*] *Rep. Act VI of 1895, s. 3.*

9. [*Record of evidence.*] *Rep. Act VI of 1895, s. 3.*

10. No appeal shall lie from any decree or order passed in any suit to which this Chapter applies.

No appeal to lie.

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[1] *Supra.*

[2] The words "and any such jurisdiction heretofore conferred on any Subordinate Judge shall be deemed, except as regards suits instituted before the said first day of November, 1879, to have been withdrawn" were repealed by First Schedule of the Repealing and Amending Act, 1895 (16 of 1895).

[3] *See* now s. 16 of the Provincial Small Cause Courts Act, 1887 (9 of 1887), Genl. Acts, Vol. IV.

[4] The word "clearly" was added by s. 6 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra.*

[5] This *Explanation* was inserted by *ibid.*

CHAPTER III.

Of Suits and other Proceedings to which Agriculturists are Parties.

Power of Court to determine nature of transactions and to admit evidence of an oral agreement or statement.

[1] [**10A.** Whenever it is alleged at any stage of any suit or proceeding to which an agriculturist is a party that any transaction in issue entered into by such agriculturist or the person, if any, through whom he claims was a transaction of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under this Chapter, the Court shall, notwithstanding anything contained in section 92 of the Indian Evidence Act, 1872,[2] or in any other law for the time being in force, have power to inquire into and determine the real nature of such transaction and decide such suit or proceeding in accordance with such determination and shall be at liberty, notwithstanding anything contained in any law as aforesaid, to admit evidence of any oral agreement or statement with a view to such determination and decision: I of 1872.

Provided that such agriculturist or the person, if any, through whom he claims was an agriculturist at the time of such transaction :

Provided further that nothing in this section shall be deemed to apply to any suit to which a *bonâ fide* transferee for value without notice of the real nature of such transaction or his representative is a party where such transferee or representative holds under a registered deed executed more than twelve years before the institution of such suit.

Illustrations.

(*a*) A landlord sues for possession of land leased by him to an agriculturist. The defendant alleges that he mortgaged the land with possession to the lessor who is entitled to its possession only as such mortgagee and not as owner, and asks that he may be allowed to redeem the mortgage without being ejected. The Court may admit evidence on this allegation, and, if satisfied that it is correct, may decline to eject the defendant as tenant, and allow the suit to be converted into one for redemption of the mortgaged property.

(*b*) An agriculturist sues to redeem property alleged to have been mortgaged by a deed in the form of a lease. The Court may admit evidence of the intention of the parties outside the deed in order to determine whether the transaction was a mortgage or a lease, and if satisfied that the transaction was a mortgage may enforce the deed as a mortgage-deed.

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[1] Section 10 A was inserted by s. 2 of the Dekkhan Agriculturists' Relief (Amendment) Act, 1907 (Bom. Act 2 of 1907), Vol. IV of this Code.

[2] Genl. Acts, Vol. II.

(*c*) A money-lender sues to enforce a sale-deed entered into by any agriculturist. It is alleged that there was a contemporaneous oral agreement that the transaction should be deemed to be a mortgage. The Court may admit evidence of such oral agreement, and if satisfied of the existence of the agreement may decline to enforce the deed as a sale-deed.

(*d*) An agriculturist sues to redeem property alleged to have been mortgaged by a deed in the form of a sale. The Court may admit evidence of the intention of the parties outside the deed in order to determine whether the transaction was a mortgage or a sale, and if satisfied that the transaction was a mortgage may enforce the deed as a mortgage-deed.]

Agriculturists to be sued where they reside.

11. Every suit of the description mentioned in section 3, clause (*w*), may if the defendant, or, when there are several defendants, one only of such defendants, is an agriculturist, be instituted and tried in a Court within the local limits of whose jurisdiction such defendant resides, and not elsewhere.

Every such suit in which there are several defendants who are agriculturists may be instituted and tried in a Court within the local limits of whose jurisdiction any one of such defendants resides, and not elsewhere.

Nothing herein contained shall affect sections 22 to 25 (both inclusive) of the [1]Code of Civil Procedure.

History of transactions with agriculturist-debtors to be investigated.

12. In any suit of the description mentioned in section 3, clause (*w*), in which the defendant or any one of the defendants [2]* * * * * is an agriculturist,

and in any suit of the descriptions mentioned in section 3, clause (*y*) or clause (*z*),

[3][the Court, if the amount of the creditor's claim is disputed, shall examine both the plaintiff and the defendant as witnesses, unless, for reasons to be recorded by it in writing, it deems it unnecessary so to do, and shall inquire] into the history and merits of the case, from the commencement of the transactions between the parties and the persons (if any, through whom they claim, out of which the suit has arisen, first with a view to ascertaining

[1] *See* now Act 5 of 1908, Genl. Acts, Vol. VI.

[2] The words "not being merely a surety of the principal debtor" were repealed by the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[3] These words were substituted for the words "the Court shall, if the amount of the creditor's claim is disputed, inquire" by Act 23 of 1886, s. 6, *infra*.

whether there is any defence to the suit on the ground of fraud, mistake, accident, undue influence or otherwise, and, secondly, with a view to taking an account between such parties in manner hereinafter provided.

When the amount of the claim is admitted and the Court for reasons to be recorded by it in writing believes that such admission is true and is made by the debtor with a full knowledge of his legal rights as against the creditor, the Court shall not be bound so to inquire, but may do so if it thinks fit.

In other cases in which the amount of the claim is admitted, the Court shall be bound to inquire as aforesaid.

Section 9, clause first, of [1]Bombay Regulation V of 1827 is repealed so far as regards any suit to which this section applies.

Nothing herein contained shall affect the right of the parties to require that any matter in difference between them be referred to arbitration.

Mode of taking account.

13. When the Court inquires into the history and merits of a case under section 12, it shall—

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting-off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say) :—

(*a*) separate accounts of principal and interest shall be taken :

(*b*) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor, as part of the transactions :

(*c*) in the account of principal there shall not be debited to the debtor any money which he may have agreed to pay in contravention of section 257A of the [2]Code of Civil Procedure :

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[1] *Supra.*

[2] *See* now Act 5 of 1908, Genl. Acts, Vol. VI.

(*d*) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable :

(*e*) in the account of interest there shall be debited to the debtor, monthly, simple interest on the balance of principal for the time being outstanding, at the rate allowed by the Court as hereinafter provided :

(*f*) all money paid by or on account of the debtor to the creditor or on his account, and all profits, service or other advantages of every description, received by the creditor in the course of the transactions (estimated, if necessary, at such money-value as the Court in its discretion, or with the aid of arbitrators appointed by it may determine), shall be credited first in the account of interest; and when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of such payment shall be credited to the debtor in the account of principal :

(*g*) the accounts of principal and interest shall be made up to the date of instituting the suit, and the aggregate of the balances (if any) appearing due on both such accounts against the debtor on that date shall be deemed to be the amount due at that date, except when the balance appearing due on the interest-account exceed that appearing due on the principal-account, in which case double the latter balance shall be deemed to be the amount then due.

In certain cases rent may be charged in lieu of profits.

[1] **13A.** Where the mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor, and the Court is unable to determine what profits have been actually received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 13 :

Provided that, if it be proved that in any year there was an entire or serious failure of the crops, an abatement of the whole or part of such rent may be allowed for the year.

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[1] S. 13A was inserted by s. 7 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

14. [*Interest to be allowed.*] *Rep. Act VI of 1895, s. 3.*

15. [*Reference to arbitration in certain cases.*] *Rep. Act VI of 1895, s. 3.*

Mortgagor entitled to decree for redemption though time fixed by mortgage has not arrived or debt has not been paid.

[1][**15A.** In a suit of the description mentioned in section 3, clause (*z*), the Court shall not refuse to pass a decree for redemption merely on the ground that the time fixed for the payment of the principal of the mortgage-money has not arrived, or on the ground that the mortgage-debt has not been completely discharged, or on both.]

Power of Court to name some future date for payment by the mortgagor.

[2][**15AA.** So far as it may be consistent with the provisions of this Act every decree for redemption or foreclosure of any mortgage, and every decree or order for the sale of any mortgaged property made at the instance of a mortgagee thereof, shall name such future day, not being less than six months after the date of such decree, as the Court may think reasonable for the payment by the mortgagor of the money payable under the decree, and no such foreclosure shall be made absolute nor shall any such sale take place before the day so named.]

Power to order payment by instalments in case of decree for redemption, foreclosure or sale.

[1][**15B.** (*1*) The Court may in its discretion, in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section 3, clause (*y*) or clause (*z*), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and, where the mortgagee is in possession, as to the appropriation of the profits and accounting therefor, as it thinks fit.

(*2*) If a sum payable under any such direction is not paid when due, the Court shall, except for reasons to be recorded by it in writing, instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realisation of that sum.]

Power to continue the mortgagee in possession.

[3][(*3*) In passing a decree for redemption or foreclosure in any such suit as aforesaid, the Court may direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession for such further

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[1] Sections 15A, 15B, 15C and 15D were inserted by s. 6 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[2] S. 15AA was inserted by s. 8 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895) *infra*.

[3] Sub-sections (*3*) and (*4*) of section 15 B were inserted by s. 9, *ibid*.

period as will enable him to recover his principal with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

[1] (*4*) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid, the Court may in its discretion, instead of making an order for payment thereof, direct that the mortgagee be continued in possession for such period (to be specified by the Court) as will, in the opinion of the Court, be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.]

Power to order payment by instalments in suits for possession of mortgaged property.

[2] [**15C.** (*1*) The Court may, if it thinks fit, in any suit for the possession of mortgaged property under section 3, clause (*y*), instead of passing a decree for possession of that property, pass a decree directing that the amount payable by the mortgagor shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and as to the appropriation of the profits and accounting therefor, as it thinks fit.

(*2*) If a sum payable under any such direction is not paid when due, the Court may, if it thinks fit, instead of making any other order which it is empowered to make for the realisation of that sum, make an order directing that the mortgagee be put in possession of the whole or any portion of the property mortgaged.]

Mortgagor may sue for account.

[2] [**15D.** (*1*) Any agriculturist whose property is mortgaged may sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount.

(*2*) When any such suit is brought, the amount (if any) remaining unpaid shall be determined under the same rules as would be applicable under this Act if the mortgagee had sued for the recovery of the debt.

(*3*) At any time before the decree in the suit is signed, the plaintiff may apply to the Court to pass a decree for the redemption of the mortgage, or the mortgagee, if he would then have been entitled to sue for foreclosure or sale, may apply to the Court to pass a decree for foreclosure or sale (as the case may be), instead of a decree merely declaring the amount remaining unpaid, and the Court may, if it thinks fit, grant the application.

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[1] See third footnote on the preceding page.

[2] See first footnote on the preceding page.

(*4*) The provisions of section 15B shall apply to any decree passed under sub-section (*3*).]

Agriculturist debtors may sue for accounts.

16. Any agriculturist may sue for an account of money lent or advanced to or paid for him by a creditor, or due by him to the creditor as the price of goods sold, or on a written or unwritten engagement for the payment of money, and of money paid by him to the creditor, and for a decree declaring the amount, if any, still payable by him to the creditor.

Amount of debts in such cases to be determined according to foregoing provisions.

When any such suit is brought, the amount (if any) payable by the plaintiff shall be determined under the same rules as would be applicable under this Act if the creditor had sued him for recovery of the debt.

Decree under section 16 may provide for payment by instalments.

17. A decree passed under section 16 may, besides declaring the amount due, direct that such amount shall be paid by instalments, with or without interest; and, when any such decree so directs, the plaintiff may pay the amount of such decree, or the amount of each instalment fixed by such decree, as it falls due, into Court, in default whereof execution of the decree may be enforced by the defendant in the same manner as if he had obtained a decree, in a suit to recover the debt.

Execution of decrees under this section.

Payment into Court in cases under section 16.

18. The plaintiff in any suit instituted under section 16 may at any stage of such suit deposit in Court such sum of money as he considers a satisfaction in full of the defendant's claim against him.

Notice of the deposit shall be given by the Court to the defendant, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the defendant on his application.

No interest shall be allowed to the defendant on any sum so deposited from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

19. [*Power to discharge judgment-debtor. Power to direct institution of insolvency proceedings.*] *Rep Act VI of 1895, s. 3.*

Power to fix instalments in execution.

20. The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist, or the portion of the same which it directs under section 19 to be paid, shall be paid by instalments with or without interest.

Arrest and imprisonment in execution of decree for money, abolished.

21. No agriculturist shall be arrested or imprisoned in execution of a decree for money [1] [passed whether before or after this Act comes into force].

[1] These words were added by s. 8 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

22. [1] [Immoveable property belonging to an agriculturist [2] * * * * shall not be attached or sold] in execution of any decree or order [3] [passed whether before or after this Act comes into force], unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists. [4] [For the purposes of any such attachment or sale as aforesaid, standing crops shall be deemed to be moveable property.] Immoveable property exempted from attachment and sale unless specifically pledged.

But the Court,—[5] [on application or of its own motion], may, when passing a decree against an agriculturist or [6] [in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force], direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section 29.

The provisions of section 31 shall, *mutatis mutandis*, apply to any property so dealt with.

[7] [**22A.** (*1*) When any immoveable property belonging to an agriculturist has been sold by public auction under the provisions of section 325 of the [8] Code of Civil Procedure, the sale may within thirty days from the date of the auction be set aside by the Collector, if he considers the price bid by the purchaser to be inadequate. Power of Collector to set aside sale.

XIV of 1882.

(*2*) When the sale is so set aside the purchaser shall be entitled to receive back his deposit or his purchase-money, as the case may be, and the Collector may re-sell the property by public auction or private contract, as he thinks fit. Every such re-sale shall be deemed to be a sale under the provisions of section 325 of the [8] Code of Civil Procedure.]

XIV of 1882.

23. No provision of this Chapter shall apply to the proceedings in the Courts of Village-munsifs unless such provision has been specially extended thereto under the power hereinafter conferred. Chapter not to apply to Village-munsifs' Courts.

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[1] These words were substituted for the words "No agriculturist's immoveable property shall be attached or sold" by s. 7 of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[2] The words "other than his standing crops" were repealed by s. 10 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[3] These words were inserted by s. 9 (*1*) of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[4] These words were inserted by s. 10 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[5] These words were inserted by s. 9 (*2*) of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[6] These words were substituted for the words "or at any subsequent time" by s. 9 (*3*) of *ibid*.

[7] S. 22A was inserted by s. 3 of the Dekkhan Agriculturists' Relief (Amendment) Act, 1907 (Bom. Act 2 of 1907), Vol. IV of this Code.

[8] For the Code of Civil Procedure, *see* now Act 5 of 1908, Genl. Acts, Vol. VI.

[1]CHAPTER IV.

OF INSOLVENCY.

Subordinate Judges to have jurisdiction in agriculturists' cases.

24. Every Subordinate Judge shall have the powers conferred by sections 344 to 359 (both inclusive) of the [2]Code of Civil Procedure, as modified by the provisions next hereinafter contained, for the purpose of dealing with applications under the [2]Code of Civil Procedure or under this Act to have agriculturists residing within the local limits of his ordinary jurisdiction declared insolvent and proceedings taken under orders passed under the second clause of section 19; and, except as provided in Chapter VII of this Act, no such application or proceeding shall be dealt with by any other Court.

Agriculturists may apply for adjudication in cases not provided for by Code.

25. Any agriculturist whose debts (if any) amount to fifty rupees or upwards may apply to any Subordinate Judge within the local limits of whose ordinary jurisdiction he resides to be declared an insolvent, though he has not been arrested or imprisoned, and though no order of attachment has issued against his property, in execution of a decree.

Modification of section 351 of the Code.

26. Notwithstanding anything contained in section 351 of the [2]Code of Civil Procedure, the Court shall declare an agriculturist an insolvent if it is satisfied that he is in insolvent circumstances, and that the application to have him declared an insolvent has been properly made under section 344 of the said [2]Code or section 25 of this Act.

Receiver.

27. No person other than the nazir of the Court shall be appointed as receiver, and no receiver shall be entitled to commission.

Proof of debts.

28. In determining under section 352 of the said [2]Code the amount of any claim of the nature referred to in section 12 of this Act due by an insolvent agriculturist, the Court shall proceed in the manner prescribed by sections 12 to 15 of this Act, both inclusive.

Immoveable property not to vest in receiver, but may be managed for benefit of creditors.

29. No immoveable property of the insolvent shall vest in the receiver; but the Court, [3][on application or of its own motion,] may direct the Collector to take into his possession, for any period not exceeding seven years from the date on which the receiver has been appointed, any immoveable property to the possession of which the insolvent is entitled, and which, in the opinion of the Collector, is not required for the support of the insolvent and the members of his family dependent on him, and, subject to any rules the Local Government may from time to time make in this behalf, to manage the same for the benefit of the creditors by letting it on lease or otherwise:

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[1]The Provincial Insolvency Act, 1920 (5 of 1920), does not apply to cases to which this Chapter is applicable; *see* s. 82 of that Act.

[2]For the Code of Civil Procedure, *see* now Act 5 of 1908, Genl. Acts, Vol. VI.

[3]These words were inserted by s. 10 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*

Provided that, if the insolvent or his representative in interest at any time pays into Court the balance of the scheduled debts then unpaid, he shall, subject to any rights created in favour of other persons by the Collector, be entitled to recover possession of such property.

A Collector managing property under this section shall during the management have all the powers which the owner might as such have legally exercised, and shall receive and recover all rents and profits of such property, and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by an owner, all powers possessed by a Collector for securing and recovering the land-revenue due to Government except the powers mentioned in the [1]Bombay Land-revenue Code, 1879, section 150, clauses (*b*), (*d*) and (*e*).

Bom. V of 1879.

Nothing in this section shall authorise the Court to direct the Collector to take into his possession any houses or other buildings belonging to and occupied by an agriculturist.

Secured debts.

30. When any scheduled debt is secured by a mortgage of any portion of the insolvent's immoveable property, the Court, [2][on application or of its own motion], may direct the Collector, if he can obtain a premium equal to the amount of such debt by letting such property for a term not exceeding twenty years, to let such property, and, if he cannot so obtain such premium, to sell such property under section 325 of the [3]Code of Civil Procedure.

Where property is let under this section the premium shall be applied to the payment of the debt, and the rent, if any, shall for a period of seven years from the date of such letting be paid to the receiver and thereafter to the insolvent or his representative in interest.

When property is sold under this section, the sale-proceeds shall be applied, first, to the payment of the debt, and the balance, if any, shall be paid to the receiver.

Insolvent incompetent to sell, etc., property dealt with under sections 29 and 30.

31. So long as any management under section 29 or letting under section 30 continues, the insolvent and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the property managed or let, or any part thereof.

Scheduled debts discharged.

32. When the balance available for distribution among the scheduled creditors under section 356 of the said [3]Code has been distributed, the claims of such creditors shall be deemed to have been discharged, except as regards the

[1] Vol. II of this Code.

[2] These words were inserted by s. 10 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[3] For the Code of Civil Procedure, see now Act 5 of 1908, Genl. Acts, Vol. VI.

right to share in the profits of any property managed by the Collector under section 29, or let by him under section 30.

Appeals barred.

33. No appeal shall lie from any order passed under this Chapter except orders passed in exercise of the power conferred by section 359 of the [1]Code of Civil Procedure.

CHAPTER V.

Of Village-munsifs.

Appointment of Village-munsifs.

34. The Local Government may, from time to time, appoint any pátel of a village or any other person possessing local influence in a village to be a Village-munsif for such village or for such village and for any other villages the sites of which are situate in the same district not more than two miles from the site of such village, and may cancel any such appointment.

Suits triable by them.

35. Every Village-munsif so appointed shall take cognisance of suits of the description mentioned in section 3, clause (*w*), when the subject-matter thereof does not exceed ten rupees in amount or value, and all the defendants at the time of the commencement of the suit actually and voluntarily reside or carry on business or personally work for gain within the local area for which such Village-munsif is appointed.

Jurisdiction of other Courts excluded Proviso.

Notwithstanding anything hereinbefore contained, a suit cognizable by a Village-munsif shall not be heard by any other Court:

Provided that the District Judge may, from time to time, transfer any suit instituted before a Village-munsif to his own Court or any other Civil Court in the district for trial:

Provided also that no Village-munsif shall try any suit to or in which he is a party or is personally interested, or shall adjudicate upon any proceeding connected with or arising out of such suit.

District Judge's power of revision.

36. The District Judge may, on a petition being presented within thirty days from the date of any decree or order of a Village-munsif by any party deeming himself aggrieved by such decree or order, set aside such decree or order on the ground of corruption, gross partiality or misconduct of the Village-munsif [2][or on the ground that the Village-munsif has exercised a jurisdiction not vested in him by law] and pass such other decree or order as he thinks fit.

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[1] For the Code of Civil Procedure, *see* now Act 5 of 1908, General Acts, Vol. VI.

[2] These words were added by s. 11 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

Except as provided in this Act and in section 622 of the [1]Code of Civil Procedure, every decree and order of a Village-munsif shall be final.

37. The Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act for regulating the procedure of Village-munsifs and for conferring on them or any of them all or any of the powers for the trial of suits or the execution of decrees exercised by a Civil Court under the Code of Civil Procedure or any other enactment for the time being in force. Power of Local Government to make rules.

CHAPTER VI.

Of Conciliation.

38. The Local Government may, from time to time, appoint any person other than an officer of Police to be a Conciliator, and may cancel any such appointment. Appointment of Conciliators.

Every Conciliator appointed under this section shall be appointed only for a term not exceeding three years, but may, on the expiration of the period for which he has been appointed, be again appointed for a further term not exceeding three years.

Every Conciliator so appointed shall exercise his functions under this Act in respect of matters affecting agriculturists residing within such local area as the Local Government may, from time to time, prescribe.

[2][The expression "officer of Police" in this section shall not be deemed to include a Police patel appointed under [3]Bombay Act No. VIII of 1867 (*for the Regulation of the Village-police in the Presidency of Bombay*).]

39. When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties one of whom is an agriculturist residing within any local area for which a Conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated, any of the parties may apply to such Conciliator to effect an amicable settlement between them. Matters which may be brought before Conciliator.

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[1] For the Code of Civil Procedure, *see* now Act 5 of 1908, Genl. Acts, Vol. VI.

[2] This paragraph was added by s. 7 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[3] Vol. II of this Code.

Procedure thereupon.

40. If the application be made by one of the parties only, the Conciliator shall take down, or cause to be taken down, in writing a concise statement of the applicant's case, and shall thereupon, by summons or by such other means as he deems fit, invite the person against whom such application is made to attend before him at a time and place to be fixed for this purpose, and shall direct the applicant also to be present at such time and place.

Day for attendance may from time to time be postponed.

If such person fails to appear at the time first fixed, the Conciliator may, if he thinks fit, from time to time extend the period for his appearance.

[1] [A Conciliator empowered by the Local Government in this behalf may, instead of inviting, direct the person against whom the application is made to attend at the time and place either first or subsequently fixed.]

[1] [If an applicant, or a person against whom an application is made, fails to be present or attend at the time and place specified in a direction proceeding from a Conciliator under this section, he shall be deemed to have committed an offence under section 174 of the [2] Indian Penal Code.] XLV of 1860.

When all parties appear, Conciliator to endeavour to reconcile them.

41. Whenever all the parties are present, the Conciliator shall call upon each in turn to explain his case regarding the matter in question, and shall use his best endeavours to induce them to agree to an amicable settlement or to submit such matter to arbitration.

Conciliator to hear statements of witnesses, etc.

42. The Conciliator shall hear but shall not record the statement of any witness, and shall peruse any book of account or other document produced by the parties, or so much thereof as may be necessary, and if any party or witness consents in writing to affirm any statement upon oath in any form not repugnant to justice or decency and not purporting to affect any third person, shall provide for such oath being duly taken in the presence of all the parties.

Any agreement arrived at to be reduced to writing.

43. If on the day on which the case is first heard by the Conciliator, or on any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.

Explanation.—A Conciliator may be appointed arbitrator under this section.

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[1] These paragraphs were added by s. 8 of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[2] Genl. Acts, Vol. I.

[1] **44.** [(*1*) When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides, and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

Procedure when agreement finally disposes of case and in other circumstances.

(*2*) The Court which receives the agreement shall in all cases scrutinise the same, and if it thinks that the agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

(*3*) If the said Court thinks that the agreement is not a legal or equitable one, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall of its own motion issue process for the attendance of the parties, and if after such inquiry as may be deemed necessary the Court finds that such agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed, and from which no appeal lies.

(*4*) If, on the other hand, the said Court finds that the agreement does not constitute a legal or equitable agreement, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall return the said agreement to the Conciliator, and such Conciliator shall thereupon be bound to furnish on demand to the parties or any one of them a certificate under section 46.

(*5*) The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section.]

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[1] This section was substituted for section 44 by s. 12 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

Procedure where agreement is for reference to arbitration.

45. When the agreement is one for referring the matter to abritration, the Conciliator shall forward it to the Court having jurisdiction in the matter, and such Court shall cause it to be filed and proceed thereon in manner provided by sections 523 and 524 of the [1]Code of Civil Procedure.

Certificate to be given to applicant if conciliation fails.

46. If the person against whom any application is made before a Conciliator cannot after reasonable search be found, or if he refuses or neglects, after a reasonable period has been allowed for his appearance, to appear before the Conciliator, or if he appears but the endeavour to induce the parties to agree to an amicable settlement or to submit the matter in question to abritration fails, the Conciliator shall, on demand, give to the applicant, or when there are several applicants to each applicant, a certificate under his hand to that effect.

Suit, or application for execution, not to be entertained by Civil Court unless such certificate is produced.

47. No suit, and no application for execution of a decree passed before the date on which this Act comes into force, to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, shall be entertained by any Civil Court unless the plaintiff produces [2][a certificate in reference thereto obtained by him under section 46 within the year immediately preceding].

[3][*Explanation.*—The expression "Civil Court" in this section does not include a Mámlatdár's Court under Bombay Act No. III of 1876[4] (*to consolidate and amend the law relating to the powers and procedure of Mámlatdár's Courts*).]

Allowance to be made in period of limitation.

[5][**48.** In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.]

[6]* * * * * * *

[7]**48A.** [*Repealed.*]

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[1] For the Code of Civil Procedure, *see* now Act 5 of 1908, Genl. Acts, Vol. VI.

[2] These words were substituted for the words "such certificate as aforesaid in reference thereto" by s. 13 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[3] This *Explanation* was added by s. 9 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[4] This reference to Bombay Act No. III of 1876 should now be read as applying to Bombay Act No. II of 1906. Vol. IV of this Code.

[5] This section was substituted for section 48 by s. 10 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[6] The second paragraph was repealed by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[7] Section 48A, which was inserted by Bombay Act 1 of 1910, was repealed by Bombay Act 1 of 1912, s. 3.

49. The Local Government may from time to time make rules— Local Government to make rules.

(*a*) regulating the procedure before Conciliators in matters not provided for by this Act;

(*b*) fixing the charges to be made by Conciliators for anything done by them under this Chapter; and

(*c*) determining what record and accounts shall be kept by Conciliators, and what returns shall be framed and furnished by them.

CHAPTER VII.

SUPERINTENDENCE AND REVISION.

50. The District Judge shall inspect, supervise and control the proceedings, under [1] [Chapter II, Chapter IV and Chapter VI] of this Act, of all Subordinate Judges and the proceedings of all Village-munsifs and Conciliators. District Judge to inspect, etc.

[2] **51.** [The District Judge may— District Judge may withdraw case from Conciliator or Subordinate Judge,

(*a*) transfer any application pending before a Conciliator to the file of any other Conciliator;

(*b*) [3] [transfer from the Court of one Subordinate Judge to another any suit or any agreement pending before a Subordinate Judge under section 44 of this Act; or] transfer to his own file any suit or other matter pending before the Court of any Subordinate Judge under [1] [Chapter II, Chapter IV or Chapter VI] of this Act, and may dispose of the same as if he were a Subordinate Judge; or

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[1] These words and figures were substituted in ss. 50 and 51 for the words and figures "Chapter II and Chapter IV" by s. 14 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[2] This section was substituted for section 51 by s. 11 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[3] These words were inserted by s. 13 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

or sit with Subordinate Judge as a Bench for trial of any case.

(c) stay the proceedings in any such suit or matter, and sit together with such Judge as a Bench to dispose of such suit or matter in accordance with the provisions of this Act.

If the members of any Bench sitting under this section differ in opinion the opinion of the District Judge shall prevail.]

Appointment of Assistant or Subordinate Judges to aid District Judge.

[1]**52.** [(*1*) The Local Government may appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges under Chapter II, Chapter IV and Chapter VI of this Act, and of all Village-munsifs and Conciliators in any district or part of a district to which this Act applies :

Provided that, if the Local Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts or parts of districts or districts and parts of districts.

(*2*) The District Judge may, by order, confer upon any Assistant or Subordinate Judge appointed under this section, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 51.]

Of revision.

53. The District Judge may, for the purpose of satisfying himself of the legality or propriety of any decree or order passed by a Subordinate Judge in any suit or other matter under [2] [Chapter II, Chapter IV or Chapter VI] of this Act, and as to the regularity of the proceedings therein, call for and examine the record of such suit or matter, and pass such decree or order thereon as he thinks fit;

and any Assistant Judge or Subordinate Judge appointed by the Local Government under section 52 may similarly, in any district for which he is appointed, call for and examine the record of any such suit or matter, and if he see cause therefor, may refer the same, with his remarks thereon, to the District Judge, and the District Judge may pass such decree or order on the case as he thinks fit :

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[1] This section was substituted for section 52 by s. 14 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[2] These words and figures were substituted for the words and figures "Chapter II or Chapter IV" by s. 14 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

Provided that no decree or order shall be reversed or altered for any error or defect or otherwise, unless a failure of justice appears to have taken place.

54. The Local Government from time to time may [1] * * * * * * * * * appoint an officer, as Special Judge, to discharge in the place of the District Judge all the functions of the District Judge under this Act in respect of the proceedings of all Subordinate Judges, Village-munsifs and Conciliators, and may cancel any such appointment. Special Judge.

Such Special Judge shall not, without the previous sanction of the [2] [Local Government], discharge any public function except those which he is empowered by this Act to discharge.

If any conflict of authority arises between the Special Judge and the District Judge, the High Court shall pass such order thereon consistent with this Act as it thinks fit.

No appeal shall lie from any decree or order passed by the District Judge under this Chapter, or by the Special Judge, or by an Assistant or Subordinate Judge appointed under section 52, or by a Bench, in any suit or proceeding under this Act.

[3] [But the District Judge or Special Judge, or any Assistant or Subordinate Judge or Bench, may refer to the High Court, under section 617 of the [4] Code of Civil Procedure, any question of law, or usage having the force of law, or the construction of a document, arising in any case pending before him or it under this Chapter as if that case were a suit or an appeal pending before him or, it; and, in respect of every reference so made, sections 618 to 621 of the said Code, both inclusive, shall apply:]

[3] [Provided that no reference shall be made under this section by any Assistant or Subordinate Judge, or by any Bench of which the District Judge or Special Judge is not a member, without the previous sanction of the District Judge or Special Judge, as the case may be.]

CHAPTER VIII.

REGISTRATION BY VILLAGE-REGISTRARS.

55. The Local Government may from time to time,—

(*a*) appoint such persons as it thinks fit, whether public officers Appointment.

[1] The words "and if the Government of India so direct shall" were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

[2] These words were substituted for the words "Government of India," by s. 2 and Sch. I of *ibid.*

[3] These paragraphs were added by s. 15 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra.*

[4] For the Code of Civil Procedure, *see* now Act 5 of 1908, Genl. Acts, Vol. VI.

of Village-registrars.

or not, to be Village-registrars for such local areas as it may, from time to time, prescribe;

(*b*) direct the Village-registrar for any local area to discharge the functions of a Village-registrar for any other local areas concurrently with the Village-registrars of such other local areas; and

(*c*) delegate to any person, by name or in virtue of his office, the powers conferred on it by this section;

and may cancel any such appointment, direction or delegation.

Instruments executed by agriculturist not to be deemed valid unless executed before a Village-registrar.

56. No instrument which purports to create, modify, transfer, evidence or extinguish an obligation for the payment of money or a charge upon any property, or to be a conveyance or lease, and which is executed after this Act comes into force by an agriculturist residing in any local area for which a Village-registrar has been appointed, shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon by any such person or by any public officer, unless such instrument is written by, or under the superintendence of, and is attested by, a Village-registrar:

Provided that nothing herein contained shall prevent the admission of any instrument in evidence in any criminal proceeding, [1][or apply to any instrument which is executed by an agriculturist merely as a surety,] [2][or to any instrument required by section 17 of the [3]Indian Registration Act, 1877, III of 1877. to be registered under that Act].

Such instruments to be written by, or under the superintendence of, a Village-registrar and executed in his presence.

[4] **57.** [When any persons intend to execute any instrument to which section 56 applies, all such persons shall appear before the Village-registrar appointed for the area in which the agriculturist, or, when there are several agriculturists intending to execute the instrument, any one of such agriculturists, resides, and such registrar, after satisfying himself in such manner as he deems fit as to the identity of the intending executants and receiving the fee (if any) prescribed by the Local Government in this behalf, and the stamp (if any) which may be required by law, shall write the instrument, or cause the same to be written under his superintendence; and, after reading the same aloud, or causing it to be so read, in the hearing of the intending executants, shall require them to execute it in his presence.

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[1] These words were inserted by s. 12 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[2] This portion was added by s. 9 of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[3] *See* now Act 16 of 1908, Genl. Acts, Vol. VI.

[4] This section was substituted for section 57 by s. 13 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

Every instrument so written and executed shall at the time of execution be attested by the Village-registrar, and also, if any of the executants thereof is unable to read such instrument, by two respectable witnesses. Attestation of such instruments.

For the purposes of this section every executant of any such instrument shall appear in person before the Village-registrar; but every other party thereto may appear either in person or by any agent, being his relative, servant or dependant, whom he has duly furnished with a power-of-attorney, [1][executed and authenticated in such manner as the Local Government may, from time to time, by rule prescribe,] authorising him to appear and act on his behalf.]

58. Every Village-registrar shall keep a register of instruments executed before him in such form as shall, from time to time, be prescribed by the Inspector-General of Registration. Registration of instruments by Village-registrars.

As soon as all the [2][intending executants have executed any instrument] before a Village-registrar, he shall make a copy of it or cause a copy of it to be made in his register, and shall deliver the original instrument to the party entitled to the custody of the same [3]* * * * * * * * *.

Previous to delivery, the original instrument [4]* * * * * * * shall be endorsed under the Village-registrar's signature, with the date of registration, the name and residence of the Village-registrar, and the volume and page of the register in which the instrument has been registered.

[5][A certified copy of any entry in the register shall be granted by the Village-registrar, free of charge, on the application of any party to the instrument to which the entry relates, or of his agent or representative, and the copy shall be admissible as evidence of the contents of the instrument.]

59. In every instrument written by, or under the superintendence of, the Village-registrar, the amount and nature of the consideration, if any, shall be fully stated. Consideration to be fully stated in every instrument executed before a Village-registrar.

The Village-registrar shall also endorse upon the instrument a note under his hand, recording whether or not the transfer of the consideration stated therein, or of any part thereof, took place in his presence.

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[1] These words were inserted by s. 16 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[2] These words were substituted for the words "parties to any instrument have executed it" by s. 14 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[3] The words "and a certified copy thereof to the other party, or to each of the other parties if there be more than one" were repealed by s. 10 (*1*) of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[4] The words "and each such copy" were repealed by s. 10 (*2*), *ibid*.

[5] This paragraph was added by *ibid*, s. 10 (*3*).

Previous instruments to be produced.

If the instrument modifies, or wholly or partly supersedes, a previous instrument, such previous instrument shall be produced before the Village-registrar and shall be fully described in the instrument to be executed, and shall be marked by the Village-registrar under his hand for identification:

Production of copy of previous instrument when to be permitted.

[1] [Provided that, if it is alleged that any such previous instrument is on the record or otherwise in the custody of a Court, or is lost, or has been destroyed, the Village-registrar, after ascertaining that such previous instrument was duly registered, may permit a certified copy thereof to be produced in lieu of the original; and in every such case the following procedure shall be observed, that is to say:

(*a*) the contents of the certified copy shall be fully described in the modifying or superseding instrument, and the said copy shall be marked by the Village-registrar under his hand for identification, and shall then be delivered to the person who produced it;

(*b*) if the previous instrument is lost, or has been destroyed, and the registered entry thereof is in his custody, the Village-registrar shall endorse on such entry a note under his hand as to the modification or supersession of the said instrument;

(*c*) if the previous instrument is in the custody of a Court, or if it is lost, or has been destroyed, and the registered entry thereof is in the custody of another officer, the Village-registrar shall forward a certified copy of the entry in his register relating to the modifying or superseding instrument to such Court or officer, with a report explaining the circumstances, and such Court or officer shall on receipt thereof endorse on such previous instrument or registered entry a note as to the modification or supersession of the said instrument.]

Registration under this Act to be deemed equivalent to registration under Indian Registration Act, 1877.

60. Every instrument executed and registered in accordance with the foregoing provisions shall be deemed to have been duly registered under the provisions of the [2]Indian Registration Act, 1877; and no instrument which ought to have been executed before a Village-registrar but has been otherwise executed shall be registered by any officer acting under the said Act, or in any public office, or shall be authenticated by any public officer. III of 1877.

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[1] This proviso was added by s. 3 of the Dekkhan Agriculturists' Relief Act, 1902 (Bom. Act 1 of 1902), Vol. IV of this Code.

[2] *See* now Act 16 of 1908, Genl. Acts, Vol. VI.

[1] **61.** [(*1*) The Local Government may appoint one or more officers to exercise by themselves or their subordinates a general superintendence over all Village-registrars, and may either make rules, or empower such officer or officers to make rules, from time to time, consistent with this Act, for regulating the proceedings of the Village-registrars and for providing for the custody of their records.

Superintendence of Village-registrars and custody and destruction of their records.

(*2*) The Local Government may, by order to be published in the Government Gazette, declare that any documents other than wills remaining unclaimed in any registration office in any district or part of a district to which this Act applies, for a period exceeding two years, may be destroyed.]

62. Nothing in this Act shall be deemed to require any instrument, to which the Government or any officer of Government in his official capacity is a party, to be executed before a Village-registrar [2] * * *.

Exemption of instruments to which Government or any officer of Government is a party.

63. The Local Government may, from time to time, make rules regulating the appointment, suspension, dismissal and remuneration of Village-registrars, and prescribing the fees to be levied by them.

Power of Local Government to make rules.

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[3] CHAPTER VIIIA.

REGISTRATION OF INSTRUMENTS REFERRED TO IN SECTION 17 OF THE INDIAN REGISTRATION ACT, 1877.

of 1877.

[3] **63A.** (*1*) When an agriculturist intends to execute any instrument required by section 17 of the [4] Indian Registration Act, 1877, to be registered under that Act, he shall appear before the Sub-registrar within whose sub-district the whole or some portion of the property to which the instrument is to relate is situate, and the Sub-registrar shall write the instrument, or cause it to be written, and require it to be executed, and

Mode of execution by agriculturists of instruments required to be

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[1] This section was substituted for the original section 61 by s. 15 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[2] The words "or any Society registered under the Co-operative Credit Societies Act, 1904," which were inserted by Bombay Act 1 of 1910, have been repealed by Bombay Act 1 of 1912, s. 3.

[3] Ch. VIIIA was inserted by s. 11 of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[4] *See* now Act 16 of 1908, Genl. Acts, Vol. VI.

registered under Act III of 1877.

attest it and, if the executant is unable to read the instrument, cause it to be further attested, and otherwise act in accordance with the procedure prescribed for a Village-registrar by sections 57 and 59 of this Act, and shall then register the instrument in accordance with the provisions of the [1] Indian Registration Act, 1877. III of 1877.

(2) An instrument to which sub-section (1) applies shall not be effectual for any purpose referred to in section 49 of the Act last-mentioned unless it has been written, executed and attested in the manner provided in that sub-section. [2] * * *

CHAPTER IX.

Of Receipts and Statements of Account.

Agriculturists entitled to written receipts;

64. The person to whom any agriculturist makes any payment of money in liquidation of a debt shall, at the time of such payment, tender to such agriculturist, whether he demand the same or not, a written receipt for the amount of such payment.

If such payment is made under any instrument executed before a Village-registrar, the receipt shall, if the agriculturist so require, be endorsed on the copy of the instrument furnished to him under section 58.

to annual statements of account;

65. Any agriculturist by whom any money is due under any instrument shall, on such date in each year as the Local Government, having regard to local custom may from time to time, by [3] notification in the official Gazette, fix, be entitled to receive, on demand, from the person claiming under such instrument, a statement up to that date of his account under such instrument.

to have account made up from time to time in a pass-book.

66. Any agriculturist in whose name an account is kept by any trader or money-lender shall be entitled to receive from such trader or money-lender, on demand, a pass-book; and to require, from time to time, that his account up to date be written therein and authenticated by the signature or mark of the said trader or money-lender.

An entry so made in any such pass-book of any payment made to the trader or money-lender shall be deemed to be equivalent, for the purposes of section 64, to the grant of a receipt for the amount so entered.

No person whose account has been written in a pass-book as required by this section shall be entitled also to demand an account under section 65.

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[1] *See* now Act 6 of 1908, Genl. Acts, Vol. VI.

[2] The words "sub-section (1) shall not apply to any instrument to which any Society registered under the Co-operative Credit Societies Act, 1904, is a party" which were inserted by Bombay Act 1 of 1910, have been repealed by Bombay Act 1 of 1912, s. 3.

67. Any person who, in contravention of section 64, 65 or 66, refuses or neglects to tender a receipt or a statement of account or a pass-book, or to write, or cause to be written, any account or any part of an account in a pass-book, or to attest the same when so written, shall be punished for each such offence with fine which may extend to one hundred rupees. Penalty for contravention of sections 64 to 66.

CHAPTER X.

LEGAL PRACTITIONERS.

[1]**68.** [No pleader, vakíl or mukhtar, and no advocate or attorney of a High Court, shall be permitted to appear on behalf of any party to any case before a Conciliator or a Village-munsif [2]* * * * * *: Pleaders, etc., excluded in certain cases.

Provided that any party to any such case may be permitted, on reasonable cause being shown to the satisfaction of the Conciliator or Village-munsif, to employ any relative, servant or dependant who is not, and has not previously been, a pleader, vakíl or mukhtar, or an advocate or attorney of a High Court, to appear either conjointly with, or in lieu of, such party.

When a relative, servant or dependant appears in lieu of a party, he shall be furnished by him with a power-of-attorney defining the extent to which he is empowered to act.]

69. When in any suit or proceeding before a Subordinate Judge under this Act to which an agriculturist is a party, any pleader, vakíl or mukhtar, or any advocate or attorney of a High Court, appears on behalf of any party opposed to such agriculturist, the Subordinate Judge, if he is of opinion that such agriculturist has not the means of obtaining proper professional assistance, may, with the consent of such agriculturist, direct the Government pleader or any other fit person (who is willing so to do) to appear on his behalf. Power of Court to appoint pleader for agriculturist.

CHAPTER XI.

MISCELLANEOUS.

70. No mortgage, lien or charge of or upon any immoveable property belonging to an agriculturist shall be valid unless it is created by an instrument in writing under the hand of the person creating such mortgage, lien or charge. Mortgages, etc., to be valid only when written.

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[1] This section was substituted for the original section 68 by s. 15 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[2] The words "the subject-matter whereof does not exceed in amount or value one hundred rupees" were repealed by s. 17 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

Nothing in this section shall apply to any mortgage, lien or charge created by mere operation of law, or in favour of the Government or of any officer of the Government in his official capacity.

Bar of application of section 258, Act XIV, 1882.

[1] **71.** [The last clause of section 258 of the [2] Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act, in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved.] XIV of 1882.

Rate of interest allowable on taking an account.

[3] [**71A.** In taking an account under section 13 or any suit under this Act where interest is chargeable, such interest shall be awarded at the following rates:—

(*a*) the rate, if any, agreed upon between the parties or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable; or

(*b*) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or, when any agreement between the parties or the persons (if any) through whom they claim, to set off profits against interest and assessment and similar charges without an account has been set aside by the Court, such rate as the Court may deem reasonable.]

Limitation.

[4] **72.** [In any suit [5] [of the description mentioned in section 3 clause (*w*)] for the recovery of money from a person [6] * * * * who at the time when the cause of action arose was an agriculturist [7] [in any of the districts of Pooná, Sátára, Sholápur, and Ahmednagar], the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the Second Schedule annexed to the [8] Indian Limitation Act, 1877 (that is to say):— XV of 1877.

(*a*) when such suit is founded on a written instrument registered under this Act on any law in force at the date of the execution of such instrument,—twelve years;

(*b*) in any other case,—six years:

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[1] S. 71 was inserted by s. 16 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*. The original section 71 (which was repealed by Act 23 of 1881) related to registration of mortgages executed before the passing of the Act.

[2] *See* now Act 5 of 1908, Genl. Acts, Vol. VI.

[3] S. 71A was inserted by s. 17 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[4] This section was substituted for the original section 72 by s. 17 of the Dekkhan Agriculturists' Relief Act, 1881 (23 of 1881), *infra*.

[5] These words were substituted for the words "under this Act" by s. 12 (*1*) of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[6] The words "not being merely a surety for the principal debtor" were repealed by s. 12 (*2*), *ibid*.

[7] These words were inserted by s. 18 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[8] *See* now Act 16 of 1908, Genl. Acts, Vol. VI.

[1][Provided that nothing in this section shall—

(*i*) apply to a suit for the recovery of money from a person who is a surety merely of the principal debtor if the principal debtor was not at the time when the cause of action arose, an agriculturist [2][in any of the districts aforesaid], or

(*ii*) revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force.]

73. [*Decision as to whether person is an agriculturist, final.*] *Rep. Act VI of 1895, s. 3.*

[3][**73A.** When the Collector has taken any immoveable property of a judgment-debtor or insolvent into his possession under section 22 or section 29, he may, by an order in writing, direct that any other such property not so taken shall be deemed to be reserved for the support of the judgment-debtor or insolvent and the members of his family dependent on him, and may rescind that order. Certain agricultural produce exempted from attachment, etc.

While any such order continues in force in respect of any immoveable property, agricultural produce grown on that property shall not be attached or sold in execution of a decree passed whether before or after this Act comes into force, and shall not vest in the receiver appointed in any insolvency-proceedings.]

74. Except in so far as it is inconsistent with this Act, the [4] Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act. Civil Procedure Code to apply in Subordinate Judges' Courts.

[5][**74A.** Except section 2 and section 21, the provisions of this Act shall not apply to any matter to or in which any society registered under the [6] Co-operative Credit Societies Act, 1904, is a party.] Co-operative Credit Societies.

X of 1904.

75. The Local Government may, from time to time, make all such rules as it may deem necessary for carrying out the provisions herein contained. Additional power to make rules.

76. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall thereupon, in so far as they are consistent with this Act, have the force of law. Rules to be published.

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[1] This proviso was substituted for the original proviso by s. 12 (3) of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*.

[2] These words were inserted by s. 18 of the Dekkhan Agriculturists' Relief Act, 1895 (6 of 1895), *infra*.

[3] S. 73A was inserted by s. 18 of the Dekkhan Agriculturists' Relief Act, 1882 (22 of 1882), *infra*.

[4] See now Act 5 of 1908, Genl. Acts, Vol. VI.

[5] S. 74 A was inserted by s. 1 of the Dekkhan Agriculturists' Relief (Amendment) Act, 1912 (Bom. Act 1 of 1912), Vol. V of this Code.

[6] See now Act 2 of 1912, Genl. Acts, Vol. VII.

ACT No. IX OF 1880.[1]

[*30th April, 1880.*]

An Act to amend the Bombay Civil Courts Act, 1869.

Preamble.

WHEREAS it is expedient to empower the Governor of Bombay in Council to fix and, from time to time, to alter the local limits of the ordinary jurisdiction of the Subordinate Judges appointed under the Bombay Civil Courts Act, 1869; It is hereby enacted as follows :— XIV of 1869.

Short title and commencement.

1. This Act may be called the Bombay Civil Courts Act, 1880; and it shall come into force at once.

Insertion of a new section after section 22.

2. In the said Act, after section 22, the following section shall be inserted :—

[*Supra*, p. 101.]

3. [*Limits already fixed to be deemed to have been fixed according to law.*] *Rep. Act XII of 1891.*

ACT No. XV OF 1880.[2]

[THE BOMBAY REVENUE JURISDICTION ACT, 1880.]

[*3rd November, 1880.*]

An Act to amend the Bombay Revenue Jurisdiction Act, 1876.[3]

Preamble.

WHEREAS it is expedient to amend the [3] Bombay Revenue Jurisdiction Act, 1876, in manner hereinafter appearing [4] * * * * * *; It is hereby enacted as follows :— X of 1876.

Short title. Commencement.

1. This Act may be called the Bombay Revenue Jurisdiction Act, 1880; and it shall come into force at once.

Repeal of sections, 8, 9, 10 and 17 of Act X of 1876.

2. Sections 8, 9, 10 and 17 of the said [3] Bombay Revenue Jurisdiction Act, 1876, are hereby repealed : X of 1876.

Provided that the repeal hereby effected of the first clause of the said section 17 shall not operate in any scheduled district unless and until the [5] Bombay Land-revenue Code, 1879, has been extended to such district : Bom. V of 1879.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 11; and for Proceedings in Council, *see ibid*, 1880, Supplement, pp. 344 and 819.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 200; and for Proceedings in Council, *see ibid*, 1880, Supplement, pp 1145 and 1580.

[3] *Supra.*

[4] The words and figures "and to make further provision for the recovery of certain advances made in the territories administered by the Governor of Bombay in Council for purposes other than those specified in the Land Improvement Act, 1871" were repealed by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[5] Vol. II of this Code.

Provided also that the repeal of the second clause of the said section 17 shall not be deemed to render invalid or illegal anything made valid or legal by such clause.

3. To section 32 of the Bombay Civil Courts Act, No. XIV of 1869, as amended by section 15 of the said Bombay Revenue Jurisdiction Act, 1876, the following words shall be added :— Addition to section 32 of Act XIV of 1869, as amended by section 15 of Act X of 1876.

X of 1876.

[*Supra*, p. 104.]

4 & 5. [*Advances.*] *Rep. Act XII of 1881, except as regards the recovery of advances made before that Act came into force, and of the interest thereon.*

ACT No. X OF 1881.[1]

[THE CORONERS ACT, 1881.]

[*25th February, 1881.*]

An Act to amend the Coroners Act, 1871, and for other purposes.

IV of 1871.

[2] [WHEREAS it is expedient to amend the Coroners Act, 1871, in manner hereinafter appearing; It is hereby enacted as follows :—] Preamble.

1. This Act may be called the Coroners Act, 1881; and shall come into force on the passing thereof. Short title. Commencement.

2 to 4. [*Partial repeal of Act IV of 1871, s. 1; local limits of jurisdiction of Coroner of Madras.*] *Rep. Act V of 1889, s. 3 (2).*

IV of 1871.

5. In section 8 of the Coroners Act, 1871, for the words "is informed" the words "has reason to believe" shall be substituted. Amendment of section 8, Act IV of 1871.

IV of 1871.

6. For the first two clauses of section 17 of the Coroners Act, 1871, the following shall be substituted, that is to say :— Amendment of section 17.

[*Supra*, p. 113.]

IV of 1871.

7. To section 20 of the Coroners Act, 1871, the following clause shall be added, that is to say :— Addition to section 20.

[*Supra*, p. 114.]

8 & 9. [*New section substituted for section 9 of Madras Act VIII of 1867; partial repeal of Act X of 1872, Schedule V.*] *Rep. Act X of 1882.*

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 2; and for Proceedings in Council, *see ibid*, Supplement, pp. 12, 17, 221 and 250.

[2] This preamble was substituted by s. 3 (*1*) of the Coroners (Madras) Act, 1889 (5 of 1889), *infra*.

THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Commencement.
2. Partial repeal of Act XIV of 1877.
3. Interpretation-clause.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. Application for benefit of Act.
5. Order to inquire.
6. Verified statement to be submitted.
   False averments in statement.
7. Report of inquiry and proceedings thereon.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. "Order of management"; to what it extends.
   Commencement of management.
9. Effect of order of management.
   Stay of pending proceedings, etc.
   Bar of fresh proceedings.
   The debtor incompetent—
   to contract debts,
   to incumber or alienate property,
   to grant receipts for rent.
10. Manager to have powers of owner and to receive rents and profits; to have powers of Collector for their recovery.

SECTIONS.

11. Manager to pay therefrom—
    costs of management and repairs,
    Government revenue, etc.,
    rent due to superior holder,
    allowance for maintenance and expenses of debtor and family,
    cost of improvements, etc.
    Residue how disposed of.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. Notice to claimants against debtor.
    Copies of notice to be exhibited.
13. Claim to contain full particulars.
    Documents to be given up.
    Entries in books.
    Power to exclude documents not produced with claim.
14. Claim not duly notified to be barred.
    Admission of claims within further period of six months.
15. Determination of debts and liabilities.
16. Power to rank debts and to fix interest.
17. Scheme for liquidation.
    Provisions of scheme.
18. Proceedings of Commissioner on submission of scheme.
19. Power to relinquish management.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

20. Effects of sanctioning scheme.
21. Power to remove mortgagee in possession.
22. Power to inquire into consideration given for leases.
23. Power to lease.
24. Power to raise money by mortgage or sale.
25. Manager's receipt a discharge.
26. Termination of management.
    Restoration of owner.
27. Death of debtor during management.
28. Mortgages, etc., made by restored Thákur valid only for his life

CHAPTER VI.

OF APPEAL AND REVISION.

29. Appeal.
30. Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

SECTIONS.

31. Power to make rules.
32. Power to appoint new manager.
33. Managers and their agents to be public servants.
34. Investigation a judicial proceeding.
35. Power to summon witnesses and compel production of documents.
36. Bar of suits.
37. Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.
38. Exemption of certain Thákurs from certain provisions of Act.

ACT No. XXI OF 1881.[1]

[THE BROACH AND KAIRA INCUMBERED ESTATES ACT, 1881.]

[*7th September, 1881.*]

An Act to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira.

Preamble.

WHEREAS it is expedient to amend the law providing for the relief of Thákurs in the Districts of Broach and Kaira; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Broach and Kaira Incumbered Estates Act 1881 :

Commencement.

and it shall come into force on the passing thereof.

Partial repeal of Act XIV of 1877.

2. [2]Act No. XIV of 1877 (*to relieve from Incumbrances the estates of Thákurs in Broach and Kaira*), except the last three sections, is repealed.

But all applications, appointments, and rules made, all notices published and all other things duly done under the said Act or under [3]Act No. XV of 1871 (*to relieve from Incumbrances the estates of Thákurs in Broach*) shall be deemed to have been respectively made, published and done under this Act.

In section 40 of the said [2]Act No. XIV of 1877, for the words "the said Táluqdári Settlement-officer," the words "the Táluqdári Settlement-officer

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 953, and for Proceedings in Council, *see ibid*, Supplement, pp. 435, 451, 1060 and 1092.

This Act is not in force in the Panch Mahals—*see* the Panch Mahals Laws Act, 1885 (7 of 1885), s. 2 (*1*), *infra*.

[2] *Supra*.

[3] Act 15 of 1871 was repealed by the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877), *supra*.

mentioned in the Broach and Kaira Incumbered Estates Act, 1881, section 7," shall be substituted.

3. In this Act— Interpretation-clause.

"thákur" means also Tálukdár, Jágírdár and kásbátí, and such other classes of holders of estates as the Local Government may [1] ***** declare to be thákurs for the purposes of this Act :

"heir" means the person for the time being entitled as heir to a thákur :

"Commissioner" means the Revenue Commissioner of the Northern Division of the Presidency of Bombay.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. At any time within six months after the passing of this Act, any thákur, or any person who would be sole heir or one of the heirs to such thákur if he then died intestate, may apply, in writing, to the Commissioner stating that such thákur is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case. Application for benefit of Act.

When any thákur or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

5. When any such application is made by or on behalf of a thákur, or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer as he thinks fit into the nature and amount of such debts and liabilities and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same. Order to inquire.

When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application or to direct an inquiry to be made as aforesaid.

6. When an inquiry has been directed under section 5, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed Verified statement to be submitted.

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[1] The words "with the previous sanction of the Governor General in Council" were omitted by s. 2 and Schedule I of the Devolution Act, 1920 (38 of 1920).

to make such inquiry a statement duly verified by the said applicant, or by some other competent person, in the manner required by law for the verification of plaints, and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

False averments in statement.

If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the [1] Indian Penal Code. XLV of 1860.

Report of inquiry and proceedings thereon.

7. The officer so appointed, after making inquiry, shall submit a report of his proceedings to the Commissioner.

On receipt of such report, the Commissioner may—

(*a*) direct a further inquiry, or

(*b*) dismiss the application, or

(*c*) by order published in the Bombay Government Gazette, direct that the immoveable property of the debtor shall be managed, and that his debts shall be liquidated, in the manner hereinafter provided, by a manager.

The Táluqdári Settlement-officer [2] for the time being shall, unless the Local Government in any case otherwise directs, be such manager.

CHAPTER III.

Of the Order of Management.

"Order of management;" to what it extends.

8. Such order (hereinafter called "the order of management") shall extend to all immoveable property of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager from Government in the manner hereinafter provided.

Commencement of management.

The management shall be deemed to commence from the date on which the order is published.

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[1] Genl. Acts, Vol. I.

[2] As to this officer, *see* the Broach and Kaira Incumbered Estates Act, 1877 (14 of 1877), s. 40, *supra*.

9. On the publication of the order of management the following consequences shall ensue: Effect of order of management.

first, all proceedings then pending in any Civil Court in British India in respect to the debts and liabilities mentioned in section 8 shall be stayed; and the operation of all processes, executions and attachments then in force for or in respect of such debts and liabilities shall be suspended; Stay of pending proceedings, etc.

secondly, so long as the management continues, no fresh proceedings processes, executions or attachments shall be instituted in or issued by any Civil Court in British India in respect of such debts and liabilities; Bar of fresh proceedings.

thirdly, so long as the management continues, the debtor shall be incompetent— The debtor incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or to contract debts,

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or to incumber or alienate property,

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom: to grant receipts for rent.

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

fourthly, so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents and profits due in respect of the property under management; Manager to have powers of owner and to receive rents and profits;

and for the purpose of recovering such rents and profits shall have, in addition to any powers possessed by a thákur, all the powers possessed by a Collector, under the law for the time being in force, for securing and recovering land-revenue due to Government: to have powers of Collector for their recovery.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years to take effect in possession.

11. From the sums received or recovered under section 10, the manager shall pay— Manager to pay therefrom cost of management and repairs.

first, the costs of the management, including the costs of necessary repairs;

Government revenue, etc.;

secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

rent due to superior holder; allowance for maintenance and expenses of debtor and family, cost of improvements, etc.

thirdly, the rent (if any) due to any superior holder in respect of the said property;

fourthly, such periodical allowance as the Commissioner may from time to time fix for the maintenance and other necessary expenses of the debtor and of such members of his family as the Commissioner directs;

fifthly, the cost of such improvements of the said property as he thinks necessary, and as are approved by the Commissioner.

Residue how disposed of.

The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8, other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received from Government by the manager under this Act.

CHAPTER IV.

Proof of Debts and Scheme for Liquidation.

Notice to claimants against debtor.

12. On the publication of the order of management, the manager shall publish in the Bombay Government Gazette a notice in English and Gujrati calling upon all persons having claims against the debtor or the property under management to notify the same in writing to such manager within six months from the date of the publication.

Copies of notice to be exhibited.

He shall also cause copies of such notice to be exhibited at the Mamlatdárs' kacharís in the district in which the said property lies, and at such other places as he thinks fit.

Claim to contain full particulars.

13. Every such claimant shall, along with his claim, present full particulars thereof.

Documents to be given up.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

Entries in books.

If the document be an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Power to exclude documents not produced with claim.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Claim not duly notified to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Admission of claims within further period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon, to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

Scheme for liquidation.

Every such scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow from Government under this Act, and may provide for the improvement of the property under management either from the said income, or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Provisions of scheme.

18. The Commissioner may—

Proceedings of Commissioner on submission of scheme.

(*a*) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(*b*) sanction any liquidation-scheme, or any revised liquidation-scheme, submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

Power to relinquish management.

19. At any time before he has sanctioned a liquidation-scheme under section 18, the Commissioner may, by an order published in the Bombay Government Gazette, direct that on a date fixed by such order the management shall be relinquished.

On the date so fixed—

(*a*) the management shall terminate ;

(*b*) the owner of the property under management shall be restored to the possession thereof, subject to any leases made under section 10 ;

(*c*) any residue of the rents and profits of the said property retained under the last clause of section 11 shall be paid to him ; and

(*d*) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive.

In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

Of the Proceedings subsequent to sanction of the Liquidation-scheme.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the Local Government may from time to time by rule direct ; and thereupon—

1st, all proceedings, processes, executions and attachments stayed or suspended under section 9 shall be for ever barred ; and

2nd, every debt or liability due or owing to any person which was provable before the manager shall be extinguished, and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV of this Act in respect of such debt or liability.

Power to remove mortgagee in possession.

21. If the property under management or any part thereof be in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue-year.

If such incumbrancer refuse or neglect to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV of this Act.

Power to inquire into consideration given for leases.

22. If the property under management or any part thereof be in the possession of any person claiming to hold under a lease dated within the three years immediately preceding the commencement of the management, the manager may inquire into the sufficiency of the consideration for which the lease was given; and, if such consideration appear to him insufficient, may by order, with the consent of the Commissioner, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and, in default of such payment, the lease shall be cancelled.

Power to lease.

23. Subject to the rules made under section 31, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions, as may be agreed upon.

Power to raise money by mortgage or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(*a*) by mortgaging the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(*b*) by charging the whole or any part of such property; or

(*c*) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(*d*) by borrowing money from Government at such rate of interest as appears reasonable to the Local Government.

Manager's receipt a discharge.

25. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Termination of management.

26. When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received from Government under clause (*d*) of section 24, together with the interest (if any) due thereon, have been paid and discharged as therein provided, or in such other manner as the Commissioner thinks fit, the manager shall publish in the Bombay Government Gazette a notice fixing a date for the termination of the management.

Restoration of owner.

On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23 and 24.

Death of debtor during management.

27. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided,—

1st, the management shall continue and proceed in all respects as if such debtor were still living ;

2ndly, any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by clauses (*b*) and (*c*) of section 9 ; and

3rdly, no Civil Court in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management, for or in respect of any debt or liability incurred by any such person whether before or after his said succession.

Mortgages, etc., made by restored thákur valid only for his life.

28. When a thákur has been restored under section 26 to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made by such thákur, shall be valid as to any time beyond his natural life [1][unless made or granted with the previous sanction of the Commissioner].

CHAPTER VI.

Of Appeal and Revision.

Appeal.

29. An appeal against any decision or order under sections 14, 15, 16 and 22, or imposing a fine or imprisonment in exercise of the powers conferred by section 35, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

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[1] These words were added by s. 2 and First Schedule of the Bombay Repealing and Amending Act, 1919 (Bom. Act 2 of 1919), Vol. V of this Code.

There shall be no appeal against the decision of the Commissioner on such appeal.

30. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

31. The Local Government may, from time to time, make rules consistent with this Act—

Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers inquiring into and determining on claims under Chapter IV of this Act; and in particular as to the allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder from Government;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

Such rules shall be published in the Bombay Government Gazette, and when so published shall have the force of law.

32. The Local Government may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager.

Power to appoint new manager.

Every such new manager shall have the same powers as if he had been originally appointed.

Managers and their agents to be public servants.

33. Every manager appointed under this Act and every agent of such manager shall be deemed a public servant within the meaning of the [1] Indian Penal Code. XLV of 1860.

Investigation a judicial proceeding.

34. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the [1] Indian Penal Code. XLV of 1860.

Power to summon witnesses and compel production of documents.

35. For the purposes of this Act, the manager and any officer making an inquiry under section 5 may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided in the case of a Civil Court by the [2] Code of Civil Procedure.

Bar of suits.

36. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

Saving of jurisdiction of Courts in Broach and Kaira in respect of certain suits.

37. Nothing in this Act precludes the Courts in Broach and Kaira having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Exemption of certain thákurs from certain provisions of Act.

38. Nothing in section 9 shall be deemed to render any of the following thákurs, namely, the thákur of Ahmod, the thákur of Sarod, the thákur of Kerwára, the thákur of Dehej, and the thákur of Janiádra, incompetent to enter into contracts involving him in pecuniary liability, nor shall anything in section 28 apply to any of the said thákurs:

Provided that, if any such thákur has, since the scheme for the settlement of his debts and liabilities was approved under section 11 of the said [3] Act No. XV of 1871, entered into any contract involving him in pecuniary liability exceeding the average annual income derived during the previous five years from immoveable property after deducting therefrom the land-tax and other dues of Government, the Local Government may, by notification in the Bombay Government Gazette, declare that the exemption made by the former part of this section shall cease in his case, and thereupon such exemption shall cease accordingly.

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[1] Genl. Acts, Vol. I.

[2] See now Act 5 of 1908, Genl. Acts, Vol. VI.

[3] Act 15 of 1871 was repealed by the Broach and Kaira Incumbered Estates Act, 1877 (14) of 1877), *supra*.

ACT No. XXIII OF 1881.[1]

[*26th October, 1881.*]

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

XVII of 1879.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the [2]Dekkhan Agiculturists' Relief Act, 1879; It is hereby enacted as follows: — Preamble.

1. This Act may be called the [2]Dekkhan Agriculturists' Relief Act, 1881; and it shall come into force at once. Short title. Commencement.

XVII of 1879.

2. In this Act "section" means a section of the [2]Dekkhan Agriculurists' Relief Act, 1879. "Section."

3. In section 1, before the word "Sections" the words "This section and" shall be, and be deemed to have always been, inserted. Amendment of section 1.

4. [*Amendment of section 2, clause (2).*] *Rep. Act XII of 1891.*

5. [*Repeal of parts of sections 3 and 12.*] *Rep. Act XII of 1891.*

6. [*Amendment of section 19.*] *Rep. Act XVI of 1895.*

7. To section 38 the following shall be added:— Addition to section 38.

[*Supra*, p. 163.]

8. [*Amendment of section 44.*] *Rep. Act XVI of 1895.*

9. To section 47 the following shall be added, namely:— Addition to section 47.

[*Supra*, p. 166.]

10. For section 48 the following section shall be substituted:— New section substituted for section 48.

[*Supra*, p. 166.]

11. For section 51 the following section shall be substituted:— New section substituted for section 51.

[*Supra*, p. 167.]

12. To section 56 the following shall be added, namely:— Addition to section 56.

[*Supra*, p. 170.]

13. For section 57 the following section shall be substituted:— New section substituted for section 57.

[*Supra*, p. 170.]

14. In section 58, for the words "parties to any instrument have executed it" the words "intending executants have executed any instrument" shall be substituted. Amendment of section 58.

15. For section 68 the following section shall be substituted:— New section substituted for section 68.

[*Supra*, p. 175.]

16. [*Repeal of section 71.*] *Rep. Act XII of 1891.*

17. For section 72 the following section shall be substituted:— New section substituted for section 72.

[*Supra*, p. 176.]

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1881, Pt. V, p. 380, and for Proceedings in Council, *see ibid*, Supplement, pp. 384 and 1243.

[2] Acts 17 of 1879, 23 of 1881 and 22 of 1882 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1882—*see* Act 22 of 1882, s. 1 (*1*), *infra*.

The Acts of 1879 to 1882 and Act 23 of 1886 may be cited collectively as the Dekkhan Agriculturists' Relief Acts 1879 to 1886—*see* Act 23 of 1886, s. 1 (*1*), *infra*.

THE INDIAN EASEMENTS ACT, 1882.

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. Savings.
3. Construction of certain references to Act XV of 1877 and Act IX of 1871.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. "Easement" defined.
   Dominant and servient heritages and owners.
5. Continuous and discontinuous, apparent and non-apparent, easements.
6. Easement for limited time or on condition.
7. Easements restrictive of certain rights.
   (*a*) Exclusive right to enjoy.
   (*b*) Rights to advantages arising from situation.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS.

8. Who may impose easements.
9. Servient owners.
10. Lessor and mortgagor.
11. Lessee.
12. Who may acquire easements.
13. Easements of necessity and *quasi*-easements.
14. Direction of way of necessity.
15. Acquisition by prescription.
16. Exclusion in favour of reversioner of servient heritage.
17. Rights which cannot be acquired by prescription.
18. Customary easements.
19. Transfer of dominant heritage passes easement.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

SECTIONS.

20. Rules controlled by contract or title.
Incidents of customary easements.
21. Bar to use unconnected with enjoyment.
22. Exercise of easement.
Confinement of exercise of easement.
23. Right to alter mode of enjoyment.
24. Right to do acts to secure enjoyment.
Accessory rights.
25. Liability for expenses necessary for preservation of easement.
26. Liability for damage from want of repair.
27. Servient owner not bound to do anything.
28. Extent of easements.
Easement of necessity.
Other easements—
(*a*) right-of-way;
(*b*) right to light or air acquired by grant;
(*c*) prescriptive right to light or air;
(*d*) prescriptive right to pollute air or water;
(*e*) other prescriptive rights.
29. Increase of easement.
30. Partition of dominant heritage.
31. Obstruction in case of excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. Right to enjoyment without disturbance.
33. Suit for disturbance of easement.
34. When cause of action arises for removal of support.
35. Injunction to restrain disturbance.
36. Abatement of obstruction of easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

37. Extinction by dissolution of right of servient owner.
38. Extinction by release.
39. Extinction by revocation.
40. Extinction on expiration of limited period or happening of dissolving condition.
41. Extinction on termination of necessity.

SECTIONS.

42. Extinction of useless easement.
43. Extinction by permanent change in dominant heritage.
44. Extinction on permanent alteration of servient heritage by superior force.
45. Extinction by destruction of either heritage.
46. Extinction by unity of ownership.
47. Extinction by non-enjoyment.
48. Extinction of accessory rights.
49. Suspension of easement.
50. Servient owner not entitled to require continuance.
Compensation for damage caused by extinguishment.
51. Revival of easements.

CHAPTER VI.

LICENSES.

52. "License" defined.
53. Who may grant license.
54. Grant may be express or implied.
55. Accessory licenses annexed by law.
56. License when transferable.
57. Grantor's duty to disclose defects.
58. Grantor's duty not to render property unsafe.
59. Grantor's transferee not bound by license.
60. License when revocable.
61. Revocation express or implied.
62. License when deemed revoked.
63. Licensee's rights on revocation.
64. Licensee's rights on eviction

ACT No. V OF 1882.[1]

[THE INDIAN EASEMENTS ACT, 1882.]

[*17th February, 1882.*]

An Act to define and amend the law relating to Easements and Licenses.

Preamble. WHEREAS it is expedient to define and amend the law relating to Easements and Licenses; It is hereby enacted as follows :—

PRELIMINARY.

Short title. **1.** This Act may be called the Indian Easements Act, 1882.

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 494; for Report of Select Committee, *see ibid*, 1881, Pt. V, p. 1021; and for Proceedings in Council, *see ibid*, Supplement, pp. 687, 766; and *ibid*, 1882, Supplement, p. 172.

It extends [1] to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg; and **Local extent.**

it shall come into force on the first day of July, 1882. **Commencement.**

2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from— **Savings.**

(*a*) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;

(*b*) any customary or other right (not being a license) in or over immoveable property which the Government, the public or any person may possess irrespective of other immoveable property; or

(*c*) any right acquired, or arising out of a relation created, before this Act comes into force.

[2] **3.** [All references in any Act or Regulation to sections 26 and 27 of the [3] Indian Limitation Act, 1877, or to sections 27 and 28 of Act No. IX of 1871[4] shall, in the territories to which this Act extends, be read as made to sections 15 and 16 of this Act.] **Construction of certain references to Act XV of 1877 and Act IX of 1871.**

CHAPTER I.

OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses as such for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own. **"Easement" defined.**

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner. **Dominant and servient heritages and owners.**

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the

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[1] Act 5 of 1882 was extended to the territories administered by the Governor of Bombay in Council by Act 8 of 1891, *infra*.

[2] Section 3 was substituted by the Repealing and Amending Act, 1914 (10 of 1914).

[3] See now Act 9 of 1908, Genl. Acts, Vol. VI.

[4] Act 9 of 1871 was repealed by the Indian Limitation Act, 1877 (15 of 1877). The Act of 1877 has been repealed by Act 9 of 1908, Genl. Acts, Vol. VI.

expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity ; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(*a*) A, as the owner of a certain house, has a right-of-way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(*b*) A, as the owner of a certain house, has the right to go on his neighbour B's land and to take water for the purposes of his household out of a spring therein. This is an easement.

(*c*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(*d*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(*e*) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(*f*) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(*a*) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(*b*) A right-of-way annexed to A's house over B's land. This is a discontinuous easement.

(*c*) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by person conversant with such matters These are apparent easements.

(*d*) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exerciseable only at a certain place or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easement for limited time or on condition.

7. Easements are restrictions of one or other of the following rights, namely:—

Easements restrictive of certain rights.

(*a*) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Exclusive right to enjoy.

(*b*) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Rights to advantages arising from situation.

Illustrations of the rights above referred to.

(*a*) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(*b*) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(*c*) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(*d*) The right of every owner of land to so much light and air as pass vertically thereto.

(*e*) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(*f*) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(*g*) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(*h*) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(*i*) The right of every owner of upper land that water naturally rising in or falling on such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(*j*) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep, and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS.

Who may impose easements.

8. An easement may be imposed by any one in the circumstances, and to the extent in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations.

(*a*) A is a tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(*b*) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(*c*) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(*d*) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right-of-way terminable with A's lease.

Servient owners.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations.

(*a*) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(*b*) A has, in respect of his house, a right-of-way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right-of-way is not thereby obstructed.

10. Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage. Lessor and mortgagor.

Explanation.—A security is insufficient within the meaning of this section, unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor. Lessee.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same. Who may acquire easements.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

13. Where one person transfers or bequeaths immoveable property to another,— Easements of necessity and *quasi*-easements.

(*a*) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement ; or

(*b*) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement ;

(*c*) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement ; or

(*d*) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(*e*) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement; or,

(*f*) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (*a*), (*c*) and (*e*), are called easements of necessity.

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(*a*) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right-of-way, for agricultural purposes only, over A's adjoining land to the field sold.

(*b*) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only and is inaccessible except by passing over the field sold to B. A is entitled to a right-of-way, for agricultural purposes only, over B's field to the field retained.

(*c*) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(*d*) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(*e*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(*f*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any

easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(*g*) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(*h*) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(*i*) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(*j*) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(*k*) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(*l*) Under the [1]Land Acquisition Act, 1870, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(*m*) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(*n*) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right-of-way over that land suitable to the business to be carried on by B in the house and grounds.

14. When [2][a right] to a way of necessity is created under section 13, the transferor, the legal representative of the testator or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner. Direction of way of necessity.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years, Acquisition by prescription.

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[1] *See* now the Land Acquisition Act, 1894 (1 of 1894), Genl. Acts, Vol. IV.

[2] These words were substituted for the word "right" by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement without interruption, and for twenty years,

and where a right-of-way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government, this section shall be read as if, for the words "twenty years" the words "sixty years" were substituted.

Illustrations.

(*a*) A suit is brought in 1883 for obstructing a right-of-way. The defendant admits the obstruction, but denies the right-of-way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(*b*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof, and enjoyed the right as such lessee. The suit shall be dismissed, for the right-of-way has not been enjoyed "as an easement" for twenty years.

(*c*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right, and asked his leave to enjoy the right. The suit shall be dismissed, for the right-of-way has not been enjoyed "as of right" for twenty years.

Exclusion in favour of reversioner of servient heritage.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is within three years next after the determination of such interest or term resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right-of-way over B's land. A proves that he has enjoyed the right for twenty-five years, but B shows that during ten of these years C had a life-interest in the land; that on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Rights which can not be acquired by prescription.

17. Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired—

(*a*) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;

(*b*) a right to the free passage of light or air to an open space of ground;

(*c*) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;

(*d*) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(*a*) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of

uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(*b*) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of dominant heritage passes easement.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right-of-way is annexed. A lets the land to B for twenty years. The right-of-way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

Rules controlled by contract or title.

20. The rules contained in this Chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of customary easements.

And, when any incident of any customary easement is inconsistent with such rules, nothing in this Chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(*a*) A, as owner of a farm Y, has a right-of-way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(*b*) A, as owner of a certain house, has a right-of-way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers, for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right-of-way for the purpose of collecting the rent and seeing that the house is kept in repair.

Exercise of easement.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can

without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined. Confinement of exercise of easement.

Illustrations.

(*a*) A has a right-of-way over B's field. A must enter the way at either end, and not at any intermediate point.

(*b*) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage. Right to alter mode of enjoyment.

Exception.—The dominant owner of a right-of-way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(*a*) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(*b*) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(*c*) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(*d*) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

[1]**24.** The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage. Right to do acts to secure enjoyment.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights. Accessory rights.

[1] *See* s. 36, *infra*, as to abatement of obstruction of easement.

Illustrations.

(*a*) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(*b*) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(*c*) A, as owner of a certain house, has a right-of-way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(*d*) A, as owner of a certain field, has a right-of-way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(*e*) A, as owner of a certain house, has a right-of-way over B's field. A may remove rocks to make the way.

(*f*) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(*g*) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land to repair the dam.

Liability for expenses necessary for preservation of easement.

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for damage from want of repair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such[1] work.

Servient owner not bound to do anything.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement; but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(*a*) A, as owner of a house, has a right to lead water and send sewage through B's land; B is not bound as servient owner to clear the watercourse or scour the sewer.

(*b*) A grants a right-of-way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right-of-way is not thereby obstructed, but he must not build a wall at the end of his land so as to prevent B from going beyond it,

[1] *See* s. 50, *infra*, as to extinguishment or suspension of easement

nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(*c*) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(*d*) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(*e*) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect :— Extent of easements.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed. Easement of necessity.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired. Other easements;

In the absence of evidence as to such intention and purpose—

(*a*) a right-of-way of any one kind does not include a right-of-way of any other kind; right-of-way;

(*b*) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made; right to light or air acquired by grant;

(*c*) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used; prescriptive right to light or air;

(*d*) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose; and prescriptive right to pollute air or water;

(*e*) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right. other prescriptive rights.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement. Increase of easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased,

and, if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(*a*) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(*b*) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(*c*) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

Partition of dominant heritage.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden on the servient heritage: Provided that such annexation is consistent with the terms of the instrument, decree, or revenue-proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(*a*) A house to which a right-of-way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part to a right-of-way by the same path.

(*b*) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(*c*) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

Obstruction in case of excessive user.

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: Provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person. Right to enjoyment without disturbance.

Illustration.

A, as owner of a house, has a right-of-way over B's land. C unlawfully enters on B's land, and obstructs A in his right-of-way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto : Provided that the disturbance has actually caused substantial damage to the plaintiff. Suit for disturbance of easement.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the first *Explanation*, or interferes materially with the physical comfort of the plaintiff, or prevents, him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(*a*) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right-of-way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(*b*) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot passengers using the way. This is not substantial damage to A.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until [1] substantial damage is actually sustained. When cause of action arises for removal of support.

[1] As to meaning of "substantial damage," *see* s. 33, *Expl. 1*, above.

Injunction to restrain disturbance.

35. Subject to the provisions of the [1] Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement,— I of 1877.

(*a*) if the easement is actually disturbed—when compensation for such disturbance might be recovered under this Chapter;

(*b*) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement.

Abatement of obstruction of easement.

36. Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V.

The Extinction, Suspension and Revival of Easements.

Extinction by dissolution of right of servient owner.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section 10.

Illustrations.

(*a*) A transfers Sultánpur to B on condition that he does not marry C. B imposes an easement on Sultánpur. Then B marries C. B's interest in Sultánpur ends, and with it the easement is extinguished.

(*b*) A, in 1860, let Sultánpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultánpur then ends, and with it C's easement.

(*c*) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(*d*) A mortgages Sultánpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

Extinction by release.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

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[1] Genl. Acts, Vol. II.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(*a*) where the dominant owner expressly authorises an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority ;

(*b*) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(*a*) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(*b*) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(*c*) A, having the right to discharge his eavesdroppings into B's yard, expressly authorises B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(*d*) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(*e*) A, having a projecting roof by means of which he enjoys an easement to discharge eavesdroppings on B's land, permanently alters the roof, so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

Extinction by revocation.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction on expiration of limited period or happening of dissolving condition.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right-of-way over A's land which B had acquired is extinguished.

Extinction of useless easement.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction by permanent change in dominant heritage.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(*a*) it was intended for the beneficial enjoyment of the dominant heritage to whatever extent the easement should be used ; or

(*b*) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it ; or

(*c*) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

Extinction on permanent alteration of servient heritage by superior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement :

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section 14 apply to such way.

Illustrations.

(*a*) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(*b*) Access to a path over which A has a right-of-way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right-of-way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages. Extinction by unity of ownership.

Illustrations.

(*a*) A, as the owner of a house, has a right-of-way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right-of-way is extinguished.

(*b*) The dominant owner acquires only part of the servient heritage : the easement is not extinguished, except in the case illustrated in section 41.

(*c*) The servient owner acquires the dominant heritage in connection with a third person : the easement is not extinguished.

(*d*) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages : the easements are not extinguished.

(*e*) The joint owners of the dominant heritage jointly acquire the servient heritage : the easement is extinguished.

(*f*) A single right-of-way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(*g*) A has a right-of-way over B's road. B dedicates the road to the public. A's right-of-way is not extinguished.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years. Extinction by non-enjoyment.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner ; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner :

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the [1] Indian Registration Act, III of 1877. 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between

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[1] *See* now Act 16 of 1908, Genl. Acts, Vol. VI.

other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(*a*) where the cessation is in pursuance of a contract between the dominant and servient owners;

(*b*) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period; or

(*c*) where the easement is a necessary easement.

Where several heritages are respectively subject to rights-of-way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights-of-way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right-of-way over X. His rights-of-way over Y and Z are not extinguished.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right-of-way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right-of-way is also extinguished.

Suspension of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient owner not entitled to require continuance.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Compensation for damage caused by extinguishment.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

51. An easement extinguished under section 45 revives —

Revival of easements.

(*a*) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion;

(*b*) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and

(*c*) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47.

Illustration.

A, as the absolute owner of field Y, has a right-of-way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right-of-way revives.

CHAPTER VI.

LICENSES.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license.

"License" defined.

Who may grant license.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license.

Grant may be express or implied.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

License when transferable.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

(*a*) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(*b*) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

Grantor's duty to disclose defects.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

Grantor's duty not to render property unsafe.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

Grantor's transferee not bound by license.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

License when revocable.

60. A license may be revoked by the grantor, unless—

(*a*) it is coupled with a transfer of property and such transfer is in force;

(*b*) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

61. The revocation of a license may be express or implied.

Revocation express or implied.

Illustrations.

(*a*) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(*b*) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

62. A license is deemed to be revoked—

License when deemed revoked.

(*a*) when from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license :

(*b*) when the licensee releases it, expressly or impliedly, to the grantor or his representative :

(*c*) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled :

(*d*) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right :

(*e*) where the licensee becomes entitled to the absolute ownership of the property affected by the license :

(*f*) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable :

(*g*) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist :

(*h*) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee :

(*i*) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

Licensee's rights on revocation.

64. Where a license has been granted for a consideration, and the licensee without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

Licensee's rights on eviction.

ACT No. XXII OF 1882.[1]

[THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1882.]

[*22nd December, 1882.*]

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

Preamble.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Act, 1879; It is hereby enacted as follows:— XVII of 1879.

Short title.

1. (*1*) This Act may be called the Dekkhan Agriculturists' Relief Act, 1882; and it and the [2] Dekkhan Agriculturists' Relief Act, 1879, and the [2] Dekkhan Agriculturists' Relief Act, 1881, may be cited collectively as the [3] Dekkhan Agriculturists' Relief Acts, 1879 to 1882. XVII of 1879. XXIII of 1881.

Commencement.

(*2*) This Act shall come into force on the first day of February, 1883.

Definition of "section" and "Chapter."

2. In this Act, unless there is something repugnant in the subject or context, "section" means a section, and "Chapter" a Chapter, of the Dekkhan Agriculturists' Relief Act, 1879, as amended by the Dekkhan Agriculturists' Relief Act, 1881.[2] XVII of 1879. XXIII of 1881.

3. [*New section substituted for section 2, Act XVII of 1879.*] *Rep. Act XVI of 1895.*

New section inserted after section 2.

4. After section 2 the following section shall be inserted:

[*Supra*, p. 149.]

Amendment of section 3.

5. In section 3, clause (*a*), after the word "account" the words "whatever be the amount or value of the subject-matter thereof" shall be inserted.

New sections inserted after section 15.

6. After section 15 the following sections shall be inserted, namely:—

[*Supra*, p. 156.]

7. [*Amendment of section 19.*] *Rep. Act XVI of 1895.*

Amendment of section 21.

8. To section 21 the words "passed whether before or after this Act comes into force" shall be added.

Amendment of section 22.

9. (*1*) In section 22, after the words "decree or order," the words "passed whether before or after this Act comes into force," shall be inserted.

(*2*) In the same section, after the word "Court" the words "on application or of its own motion" shall be inserted.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt. V, p. 876, and for Proceedings in Council, *see ibid*, Supplement, pp. 1197, 1702 and 1859 respectively; and *ibid*, 1883, Supplement, p. 7.

[2] *Supra.*

[3] The Acts of 1879 to 1882 and Act 23 of 1886 may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1886—*see* s. 1 (*1*) of the Dekkhan Agriculturists' Relief Act, 1886 (23 of 1886), *infra*. *See* also s. 1 (*1*) of Act 6 of 1895, *infra*.

(3) In the same section, for the words "at any subsequent time" the words "in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force" shall be substituted.

10. In section 29, first clause, and in section 30, after the word "Court," the words "on application or of its own motion," shall be inserted. Amendment of sections 29 and 30.

11. and 12. [*Amendment and addition to section 44.*] *Rep. Act XVI of 1895.*

13. In section 47, for the words "such certificate as aforesaid in reference thereto" the following shall be substituted, namely:— Amendment of section 47.

[*Supra*, p. 166.]

14. In section 50 [1] * * * for the words and figures "Chapter II and Chapter IV," the words and figures "Chapter II, Chapter IV and Chapter VI" shall be substituted; and in sections 51 and 53, for the words and figures "Chapter II or Chapter IV," the words and figures "Chapter II, Chapter IV or Chapter VI" shall be substituted. Amendment of sections 50 to 53.

15. To section 54 the following shall be added, namely:— Amendment of section 54.

[*Supra*, p. 169.]

16. In section 57, after the words "power-of-attorney" the following shall be inserted, namely:— Amendment of section 57.

[*Supra*, p. 171.]

17. [*Repeal of part of section 68.*] *Rep. Act XII of 1891.*

18. After section 73 the following section shall be inserted, namely:— New section inserted after section 73.

[*Supra*, p. 177.]

19. [*Limitation of suits.*] *Rep. Act XII o 1891.*

ACT No. VII OF 1885.[2]

[THE PÁNCH MAHÁLS LAWS ACT, 1885.]

[*20th February, 1885.*]

An Act to amend the law in force in the Pánch Maháls.

WHEREAS it is expedient that the law in force in the territory comprised in the Pánch Maháls should on and from the first day of May, 1885, be the same as the law in force in the district of Kaira, in the Bombay Presidency, and that the said territory should, on and from that day, cease to be a

[1] The word and figures "and 52" were repealed by the Repealing and Amending Act, 1895 (16 of 1895).

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1884, Pt. V, p. 594; and for Proceedings in Council, *see ibid*, Supplement, pp. 1540 and 1651; and *ibid*, 1885, Supplement, p. 335.

scheduled district under the [1]Scheduled Districts Act, 1874, and the [1]Laws Local Extent Act, 1874; It is hereby enacted as follows :— XIV of 1874. XV of 1874.

Short title.

1. This Act may be called the Pánch Mahál's Laws Act, 1885.

Laws of Kaira to apply.

2. (*1*) Save and except the enactments specified in the Schedule hereto annexed, all enactments which on the first day of May, 1885, are in force in the district of Kaira, and not in the Pánch Mahál's, shall be deemed to come into force in the Pánch Mahál's on that day.

Other laws repealed.

(*2*) All enactments which on that day are in force in the Pánch Mahál's and not in the district of Kaira shall be deemed to be repealed on and from that day in the Pánch Mahál's.

Pending proceedings.

3. All proceedings commenced before any authority in the Pánch Mahál's before the first day of May, 1885, and still pending on that day, shall be disposed of by such authority as the Local Government may direct, and, save as aforesaid, shall be carried on as if this Act had not been passed.

Territory to cease to be scheduled district.

4. On and from the first day of May, 1885, the Pánch Mahál's shall cease to be a scheduled district [2]* * * * * * .

THE SCHEDULE.

ENACTMENTS EXCEPTED FROM THE OPERATION OF SECTION 2.

Acts of the Governor General in Council.

Number and year.	Title.	Extent of exception.
[3]VIII of 1870 ...	For the prevention of the murder of female infants.	The whole.
[4]XXI of 1881 ...	To amend the law providing for the relief of Thakurs in the districts of Broach and Kaira.	The whole.

Acts of the Governor of Bombay in Council.

Number and year.	Title.	Extent of exception.
[5]V of 1862 ...	For the preservation of the Bhagdari and Narwadari Tenures.	The whole.
[5]V of 1879 ...	To consolidate and amend the law relating to Revenue-officers and the land-revenue in the Presidency of Bombay.	Section 85 [6][and sub-section (*3*) of section 58].

[1] Genl. Acts, Vol. II.

[2] The words and figures "and in Part II of the First Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874, the words 'The Pánch Mahál's' shall be repealed" were repealed by the Repealing and Amending Act, 1891 (12 of 1891), Genl. Acts, Vol. IV.

[3] Genl. Acts, Vol. II, but *see* s. 2 of Bombay Act III of 1897 (Vol. III of this Code), which declares that Act 8 of 1870 shall be deemed to extend, and from the 21st December 1870 to have extended, to the Presidency of Bombay.

[4] *Supra.*

[5] Vol. II of this Code.

[6] These words and figures were substituted for the words and figures "and last fifteen words of section 58" by s. 2 of the Bombay Repealing and Amending Act, 1910 (Bom. Act 1 of 1910), Vol. V of this Code.

ACT No. XXIII OF 1886.[1]

[THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1886.]

[*22nd October, 1886.*]

An Act to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1882.[2]

WHEREAS it is expedient to amend, in manner hereinafter appearing, the Dekkhan Agriculturists' Relief Acts, 1879 to 1882; It is hereby enacted as follows:—

XVII of 1879. XXIII of 1881. XXII of 1882.

Short title and commencement.

1. (*1*) This Act may be called the Dekkhan Agriculturists' Relief Act, 1886; and it and the Dekkhan Agriculturists' Relief Acts, 1879 to 1882, may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1886.

(*2*) This Act shall come into force on the first day of January, 1887.

Definition.

2. In this Act, unless there is something repugnant in the subject or context,—

"section" means a section, and "Chapter" a Chapter, of the Dekkhan Agriculturists' Relief Act, 1879, as amended by the Dekkhan Agriculturists' Relief Act, 1881, and the Dekkhan Agriculturists' Relief Act, 1882.

Addition to section 1, Act XVII of 1879.

3. To section 1 the following shall be added after the word "Ahmadnagar", namely:—

[*Supra*, p. 148.]

4. [*Addition to section 2.*] *Rep. Act XVI of 1895.*

Amendment of section 3.

5. In section 3, clause (*y*), the word "and" shall be substituted for the word "or" where the latter word occurs between the word "foreclosure" and the word "sale".

Amendment of section 12.

6. In section 12, for the words "the Court shall, if the amount of the creditor's claim is disputed, inquire", the following shall be substituted, namely:—

[*Supra*, p. 153.]

Amendment of section 22.

7. In section 22, for the words "No agriculturist's immoveable property shall be attached or sold," the following shall be substituted, namely:—

[*Supra*, p. 159.]

Addition to section 40.

8. To section 40 the following shall be added, namely:—

[*Supra*, p. 164.]

Addition to proviso to section 56.

9. To the proviso to section 56 the following shall be added, namely:—

[*Supra*, p. 170.]

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1886, Pt. V, p. 806; and for Proceedings in Council, *see ibid*, Supplement, pp. 1155, 1189 and 1455.

[2] *Supra.*

10. (*1*) and (*2*). [*Repeal of parts of section 58.*] *Rep. Act XII of 1891.*

Addition to section 58.

(*3*) After [1] [section 58] the following shall be added, namely :—

[*Supra*, p.171.]

Insertion of Chapter VIIIA.

11. After Chapter VIII and section 63 the following shall be inserted, namely :—

[*Supra*, p. 173.]

Amendment of section 72.

12. (*1*) In section 72, for the words "under this Act," where they first occur, the words "of the description mentioned in section 3, clause (*w*)", shall be substituted.

(*2*) [*Repeal of part of section 72.*] *Rep. Act XII of 1891.*

(*3*) For the proviso to the same section the following shall be substituted, namely :—

[*Supra*, p. 177.]

13. [*Limitation of certain suits.*] *Rep. Act XII of 1891.*

ACT No. XII OF 1888.[2]

[THE CITY OF BOMBAY MUNICIPAL (SUPPLEMENTARY) ACT, 1888.]

[*12th October, 1888.*]

An Act to supplement certain provisions of the [3] City of Bombay Municipal Act, 1888 [4]* * * *.

WHEREAS it is expedient to supplement by legislation in the Council of the Governor General for making Laws and Regulations certain provisions of the [3] City of Bombay Municipal Act, 1888 [4]* * * * ; It is hereby enacted as follows :—

Confirmation of the City of Bombay Municipal Act, 1888,

1. The [3] City of Bombay Municipal Act, 1888 [4]* * * * shall, so far as regards— Bom. III of 1888.

(*a*) the jurisdiction thereby conferred upon Appellate Benches of Municipal Authorities and upon Presidency and other Magistrates and Courts of Small Causes or any Judge of such a Court, and

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[1] This word and figures were substituted for the words "the same section" by the Repealing and Amending Act, 1891 (2 of 1891), Genl. Acts, Vol. IV.

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 70 ; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 99 and 107. The short title was given by Bom. Act 2 of 1921, Vol. V of this Code.

[3] Vol. III of this Code.

[4] The words relating to the Calcutta Municipal Consolidation Act, in the title and preamble, and in section 1, were repealed by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), Bengal Code.

(*b*) the decisions, orders and other proceedings of those Benches, Magistrates and Courts or of any such Judge,

be as valid as if they had been passed by the Governor General of India in Council at a meeting for the purpose of making Laws and Regulations.

so far as regards Benches, Magistrates and Courts of Small Causes.

2. (*1*) If, before or on the hearing of an appeal under section 217 of the Bom. III of 1888. [1] City of Bombay Municipal Act, 1888, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Chief Judge of the Court of Small Causes of Bombay entertains reasonable doubt, the Chief Judge may, either of his own motion or on the application of either or any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement, with his own opinion on the point, for the decision of the High Court of Judicature at Bombay.

Reference of questions by the Chief Judge of the Bombay Small Cause Court to the Bombay High Court.

(*2*) When a reference is made to the High Court under sub-section (*1*) the provisions of sections 618 to 621, both inclusive, of the [2] Code of Civil Procedure shall, so far as they can be made applicable, apply to the Chief Judge of the Court of Small Causes and to the High Court, respectively.

3. (*1*) An appeal shall lie to the High Court of Judicature at Bombay from a decision passed by the Chief Judge of the Court of Small Causes of Bombay under section 503 or section 504 of the [1] City of Bombay Municipal Bom. III of 1888. Act, 1888, when the amount of the claim in respect of which the decision is passed exceeds two thousand rupees.

Appeal to the Bombay High Court from certain orders of the Chief Judge of the Bombay Small Cause Court.

(*2*) The provisions of the [2] Code of Civil Procedure with respect to appeals from original decrees shall, so far as they can be made applicable, apply to appeals under sub-section (*1*), and orders passed therein by the High Court may, on application to the Chief Judge of the Court of Small Causes, be executed by him as if they were decrees made by himself.

(*3*) A decision passed by the Chief Judge of the Court of Small Causes of Bombay under section 503 or section 504 of the [1] City of Bombay Municipal Bom. III of 1888. Act, 1888, shall, if an appeal does not lie therefrom under sub-section (*1*), be final.

4. (*1*) An appeal shall lie to the High Court of Judicature at Bombay from an order passed by a Presidency Magistrate under section 515 of the Bom. III of 1888. [1] City of Bombay Municipal Act, 1888.

Appeal to the Bombay High Court from orders of Presidency Magistrates in Bombay.

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[1] Vol. III of this Code.

[2] *See* now Act 5 of 1908, Genl. Acts, Vol. VI.

(2) The High Court may, from time to time, make rules for regulating the admission of appeals under sub-section (1) and the procedure to be followed in the adjudication thereof.

(3) When an appeal has been preferred to the High Court under this section, the Municipal Commissioner for the City of Bombay shall defer action upon the order of the Presidency Magistrate until the appeal has been disposed of.

(4) But, when the appeal has been disposed of, he shall forthwith give effect to the order passed therein by the High Court, or if the order of the Presidency Magistrate has not been disturbed by the High Court, then to his order.

(5) When disposing of an appeal under this section, the High Court may direct by whom the costs of the appeal are to be paid, and whether in whole or in what part or proportion.

(6) Costs so directed to be paid may, on application to a Presidency Magistrate, be recovered by him, in accordance with the direction of the High Court, as if there were a fine imposed by himself.

Period of limitation for appeals to the Bombay High Court under the two last foregoing sections.

5. An appeal to the High Court of Judicature at Bombay under either of the two last foregoing sections shall, for the purposes of No. 156 of the Second Schedule to the [1] Indian Limitation Act, 1877, be deemed to be an appeal under the [2] Code of Civil Procedure in a case not provided for by No. 151 and No. 153 of that Schedule. XV of 1877.

ACT No. V OF 1889.[3]

[THE CORONERS (MADRAS) ACT, 1889.]

[*1st March, 1889.*]

An Act to abolish the office of Coroner of Madras.

WHEREAS it is expedient to abolish the office of Coroner of Madras and for this purpose to amend the [4] Coroners Act, 1871, the [4] Coroners Act, 1881, and [5] [the Code of Criminal Procedure, 1898]; It is hereby enacted as follows :— IV of 1871. X of 1881. V of 1898.

Commencement.

1. This Act shall come into force on such [6] day as the Governor of Fort

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[1] *See* now Act 9 of 1908, Genl. Acts, Vol. VI.

[2] *See* now Act 5 of 1908, Genl. Acts, Vol. VI.

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1888, Pt. V, p. 1448; and for Proceedings in Council, *see ibid*, Pt. VI, p. 139; and *Ibid*, 1889, Pt. VI, p. 42. The short title was given by Act 11 of 1901, Genl. Acts, Vol. V.

[4] *Supra.*

[5] Substituted for "the Code of Criminal Procedure, 1882," by the Repealing and Amending Act, 1903 (1 of 1903), s. 3.

[6] The 1st June, 1889—*see* Fort St. George Gazette, 1889, Pt. I, p. 335.

St. George in Council may, by notification in the Fort St. George Gazette, appoint in this behalf.

IV of 1871. **2.** For section 3 of the [1]Coroners Act, 1871, the following shall be substituted, namely :— Amendment of the Coroners Act, 1871.

[*Supra*, p. 111.]

X of 1881. **3.** (*1*) For the preamble to the [1]Coroners Act, 1881, the following shall be substituted, namely :— Amendment of the Coroners Act, 1881.

[*Supra*, p. 179.]

(*2*) [*Repeal of ss. 2, 3 and 4 of Act X of 1881.*] *Rep. Act XII of 1891.*

4. (*1*) [*Repeal of s. 1, cl. (e), of Act X of 1882.*] *Rep. Act XII of 1891.*

(*2*) *Omitted as applying only to Madras.*

ACT No. VIII OF 1891.[2]

[*6th March, 1891.*]

An Act to extend the Indian Easements Act, 1882, to certain areas in which that Act is not in force.

V of 1882. WHEREAS it is expedient to extend the [1] Indian Easements Act, 1882, to certain areas in which that Act is not in force; It is hereby enacted as follows :—

V of 1882. **1.** [1] The Indian Easements Act, 1882, is hereby extended to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh. Extension of Act V, 1882, to Bombay and the North-Western Provinces and Oudh.

ACT No. IV OF 1894.[3]

[THE AMENDING ACT, 1894.]

[*23rd February, 1894.*]

An Act [4] * * * * * to amend certain other Enactments.

[4] * * * * * * Whereas it is [4] * expedient that certain

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[1] *Supra.*

[2] For Statement of Objects and Reasons, *see* Gazette of India, 1891, Pt. V, p. 1; for Report of the Select Committee, *see ibid*, Pt. V, p. 18; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 2 and 35.

[3] For Statement of Objects and Reasons, *see* Gazette of India, 1894, Pt. V, p. 22; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 15 and 57.

[4] The portions of the Act relating to the repeal of enactments was repealed by the Repealing and Amending Act, 1903 (1 of 1903), s. 4.

formal amendments should be made in the enactments specified in the Second Schedule to this Act;

It is hereby enacted as follows:—

Title, extent and commencement.

1. (*1*) This Act may be called the [1] * Amending Act, 1894.

(*2*) It extends to the whole of the territories administered by the Governor of Bombay in Council; and

(*3*) It shall come into force at once.

2. (*1*) [*Enactments in the First Schedule repealed.*] *Rep. Act I of 1903.*

Enactments in Second Schedule amended.

(*2*) The enactments specified in the Second Schedule shall be modified to the extent and in the manner mentioned in the fourth column thereof.

3. [*Savings.*] *Rep. Act I of 1903.*

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. Act I of 1903.*]

THE SECOND SCHEDULE.

ENACTMENTS AMENDED.

1	2	3	4
Year.	No.	Subject or title.	Amendment.
		Part I.—Regulation of the Bombay Code.	
[2] 1830	XIII	Jurisdiction of Jágírdárs, etc.	In section 3, clause third, *after* open to *insert* appeal to.
		Part II.—Act of the Governor General in Council.	
[2] 1839	XX	Levy of haqqs, etc. ...	In section 3, *for* shall be punishable as for an undue exaction under Regulation XVII of 1827, section XVI, of the Bombay Code, notwithstanding the offender be not a Revenue-officer of Government, *read* shall, whether he is or is not a Revenue-officer of Government, be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine not exceeding ten times the amount of the sum so levied.

[1] See the fourth footnote on preceding page.
[2] *Supra.*

ACT No. XV OF 1894.[1]

[THE ENGINEERS' CERTIFICATES VALIDATION ACT, 1894.]

[*18th October, 1894.*]

An Act to validate certain certificates granted to engineers of steam-ships.

WHEREAS the Steam-vessel Survey Amendment Act of 1873 was repealed by the [2]Inland Steam-vessels Act, 1884, which came into force in the territories administered by the Governor of Bombay in Council on the first day of December, 1885;

VI of 1884.

And whereas between the said day and the seventh day of February, 1893, certain certificates styled "Indian Foreign Trade Certificates of Competency" were inadvertently granted in Bombay in pursuance of rules made under the said Steam-vessel Survey Amendment Act of 1873, and without regard to the provisions of the [3]Indian Steam-ships Act, 1884;

VII of 1884.

And whereas it is expedient to validate the said certificates;

It is hereby enacted as follows:—

1. (*1*) This Act may be called the Engineers' Certificates Validation Act, 1894;*[4] Short title.

[4] (*2*) * * * * * * *

2. The certificates described as "Indian Foreign Trade Certificates of Competency" which were granted under the authority of the Governor of Bombay in Council between the first day of December, 1885, and the seventh day of February, 1893 (both inclusive), to certify to the competency of the grantees thereof to act as engineers of steam-ships, shall be deemed to have been granted under the [3]Indian Steam-ships Act, 1884, and shall be recognized as valid for voyages of those classes with reference whereto they were granted: Provided that nothing herein contained shall be deemed to affect such certificates in any other respect. Validation of "Indian Foreign Trade Certificates of Competency" granted in Bombay to engineers of steam-ships.

VII of 1884.

ACT No. VI OF 1895.[5]

[THE DEKKHAN AGRICULTURISTS' RELIEF ACT, 1895.]

[*15th February, 1895.*]

An Act to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1894, Pt. V, p. 135; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 228 and 242.

[2] *See* now Act 1 of 1917, Genl. Acts, Vol. VIII.

[3] Genl. Acts, Vol. III.

[4] The word "and" and sub-cl. (2) were repealed by the Repealing and Amending Act, 1914 (10 of 1914), Genl. Acts, Vol. VIII.

[5] For Statement of Objects and Reasons, *see* Gazette of India, 1894, Pt. V, p. 102; for Report of the Select Committee, *see ibid*, 1895, p. 29; and for Proceedings in Council, *see ibid*, 1894, Pt. VI, p. 213, and *ibid*, 1895, Pt. VI, pp. 43 and 133.

Dekkhan Agriculturists' Relief Acts, 1879 to 1886; It is hereby enacted as follows :—

Title and commencement.

1. (*1*) This Act may be called the Dekkhan Agriculturists' Relief Act, 1895; and it and the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, [1] may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1895.

(*2*) This Act shall come into force on the first day of May, 1895.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

"section" means a section, and "Chapter" a Chapter, of the [1]Dekkhan Agriculturists' Relief Act, 1879.

Repeal.

3. Sections 8, 9, 14, 15, 19, and 73 are hereby repealed.

Addition to section 1.

4. To section 1 the following shall be added after the words "Presidency of Bombay," namely :—

"or to any part or parts of any other such district or districts."

Substitution of new section for section 2.

5. For section 2 the following section shall be substituted, namely :—

[*Supra*, p. 148.]

Amendment of section 7.

6. In section 7, before the word "unnecessary" the word "clearly" shall be added; and at the end of the same section the following shall be inserted, namely :—

[*Supra*, p. 151.]

Addition of new section after section 13.

7. After section 13 the following section shall be added, namely :—

[*Supra*, p. 155.]

Addition of section after section 15A.

8. After section 15A the following section shall be added, namely :—

[*Supra*, p. 156.]

Addition to section 15B.

9. To section 15B the following shall be added, namely :—

[*Supra*, p. 156.]

Amendment of section 22.

10. In section 22 the words "other than his standing crops" shall be omitted, and in the same section after the word "subsists" the following words shall be inserted, namely :—

"For the purposes of any such attachment or sale as aforesaid standing crops shall be deemed to be moveable property."

Amendment of section 36.

11. In section 36, after the words "or misconduct of the Village-munsif" and before the words "and pass," the following words shall be added, namely :—

"or on the ground that the Village-munsif has exercised a jurisdiction not vested in him by law."

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[1] *Supra*.

12. For section 44 the following section shall be substituted, namely :— Substitution of new section for section 44.

[*Supra*, p. 165.]

13. In section 51, clause (*b*), before the word "transfer" the following words shall be added, namely :— Amendment of section 51.

[*Supra*, p. 167.]

14. For section 52 the following section shall be substituted, namely :— Substitution of new section for section 52.

[*Supra*, p. 168.]

15. For section 61 the following section shall be substituted, namely :— Substitution of new section for section 61.

[*Supra*, p. 173.]

16. In Chapter XI the following section shall be inserted, namely :— Insertion of section 71 in the Act.

[*Supra*, p. 176.]

17. After section 71 the following section shall be inserted, namely :— Insertion of section 71A in the Act.

[*Supra*, p. 176.]

18. In section 72, after the word "agriculturist," where that word first occurs, the words "in any of the districts of Puna, Satara, Sholapur and Ahmednagar," Amendment of section 72.

and in the same section, after the same word where that word afterwards occurs, the words "in any of the districts aforesaid",

shall be added.

ACT No. XVI of 1895.[1]

[The Amending Act, 1895.]

[*10th October, 1895.*]

An Act [2] * * * to amend certain [2] * Enactments.

[2] * * * * * * *

Whereas it is [2] * expedient that certain formal amendments should be made in the enactments specified in the Second Schedule to this Act ;

It is hereby enacted as follows :—

1. (*1*) This Act may be called the [2] * * Amending Act, 1895. Title, extent and commencement.

(*2*) It extends to the whole of the territories administered by the Governor of Bombay in Council ; and

(*3*) It shall come into force at once.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1895, Pt. V, p. 201 ; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 347 and 357.

[2] The portions here omitted relate to the repeals made by the Act. They were repealed by the Repealing and Amending Act, 1903 (1 of 1903), Genl. Acts, Vol. V.

Enactments in Second Schedule amended.

2. (*1*) [*Enactments repealed.*] *Rep. Act I of 1903.*

(*2*) The enactments specified in the Second Schedule shall be modified to the extent and in the manner mentioned in the fourth column thereof.

3. [*Savings.*] *Rep. Act I of 1903.*

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. Act I of 1903.*]

THE SECOND SCHEDULE.

ENACTMENTS AMENDED.

1	2	3	4
Year.	No.	Subject or title.	Amendment.
Part I.—Acts of the Governor of Bombay in Council.			
[1] 1863 ...	II	Exemptions from land-revenue.	In section 5, clause *First*, first proviso, *for* or *after* nazrana *read* on. In section 11, clause *Third*, *for* collectorate *read* district.
[1] „ ...	V	Bombay Gas Company ...	In section 7, *for the words and figures* under Act XIV of 1856 *read* in Municipalities under the law for the time being in force.
[2] * *	*	* * *	* * * *
[1] 1863 ...	VII	Exemptions from land-revenue.	In section 18, clause *Second*, and section 19, clause *Fifth*, *for* the Stamp Act *read* the Court-fees Act, 1870.
[1] 1867 ...	VI	Sanitary Regulation, Bombay City.	In section 4, *for* the appended Schedule *read* Schedule A. In section 8, *between the words* may *and* require *insert* by an order in writing in the form given in Schedule B.
[1] 1869 ...	III	Bombay Local Funds Act, 1869.	In section 7, *after* defined in *insert* the. In section 7, clause 1, *after* laid down in *insert* the. In section 8, *after* occupants of land under *insert* the.

[1] For these Acts, *see* Vol. II of this Code.

[2] The entry relating to Act 6 of 1863 was repealed by s. 39 and Sch. of the Bombay Public Conveyances Act, 1920 (Bom. Act 7 of 1920), Vol. V of this Code.

THE SECOND SCHEDULE—*continued.*

1	2	3	4
Year.	No.	Subject or title.	Amendment.
Part I.—Acts of the Governor of Bombay in Council—continued.			
1 * *	*	* * *	* * * *
[1] 1874 ...	III	Bombay Hereditary Offices Act.	In the definition of "officiator" in section 4, *after* provisions *insert* of this Act. In section 10, *after* the date *insert* of this Act. In section 73, clause 2, *after* provisions *insert* of this Act.
3 * *		* * *	* * * *
[2] 1877 ...	I	Bombay Vaccination Act, 1877.	In section 3, *after* purposes *insert* of this Act. In section 28, *for* in the manner prescribed by Act XIII of 1856 (*for regulating the Police of the towns of Calcutta, Madras and Bombay*) and Act XLVIII of 1860 (*to amend Act XIII of 1856*) or any other Act for the time being in force regulating the Police of the City of Bombay, *read* in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts. In Schedule D, *for* ten rupees *read* fifty rupees.
[3] 1879 ...	IV	Karachi Vaccination Act, 1879.	In section 20, *for* to *where the word occurs before* fine *read* with, In Schedule D, *for* ten rupees *read* fifty rupees.
	V	Bombay Land-revenue Code, 1879.	In section 61, *for* an incomplete portion *read* a portion. In section 99, clause (*b*), *for* their, *the first time that word occurs, read* the. In the second paragraph of section 104, *before* revised *insert* original or. In section 211, *for the word* and *where it precedes the words* Assistant Superintendent of Survey *read* an.
4 * *	*	* * *	* * * *

[1] The entry relating to the Bombay District Municipal Act, 1873, is omitted, as that Act was repealed by the Bombay District Municipal Act, 1901 (Bom. Act 3 of 1901), Vol. IV of this Code.

[2] For these Acts, *see* Vol. II of this Code.

[3] The entry relating to the Bombay City Land-revenue Act, 1876 was repealed by section 3 and Schedule II of Act 38 of 1920.

[4] The entry relating to Bom. Act 4 of 1882 (Amending Act 48 of 1860), relating to the Bombay Town Police, was repealed by s. 4 of the Repealing and Amending Act, 1903 (1 of 1903), Genl. Acts, Vol. V.

THE SECOND SCHEDULE—*concluded.*

1	2	3	4
Year.	No.	Subject or title.	Amendment.
***Part I.—Acts of the Governor of Bombay in Council*—concluded.**			
[1]1882 ...	VII	Landing and Wharfage Fees.	In section 2, *for the words* It shall extend; (*a*) to the Ports of Karachi and Aden; (*b*) to any other ports *read* it shall extend to any ports.
[1]1883 ...	I	Bombay Highway Act, 1883.	In section 5, *for* municipalities *read* municipality.
[2]* *	*	* * *	* * * *
[3]1886 ...	III	Bombay General Clauses Act, 1886.	In column 4 of Schedule B, *opposite* Act VII of 1867, section 44, *after* of Police *insert* (where the words first occur).
[1]1888 ...	III	City of Bombay Municipal Act, 1888.	In section 35, sub-section (*2*), *for* appointment *read* appointments. In section 471, *for* 418 *read* 428.
[1] „ ...	V	Aden Port Trust Act, 1888	In section 19, in clause (*c*) of the proviso, *for the words* day aforesaid *read* 31st March, 1889, *and for the words and figure* date notified by the Governor in Council under section 9 *read* 1st April, 1889. In section 20, in clause (*b*) of the proviso, *for the words and figure* date notified by the Governor in Council under section 9 *read* 1st April, 1889.
Part II.—Regulations of the Bombay Code.			
[4]* *	*	* * *	* * * *
[5]1830 ...	VII	Southern Maratha Country	In the preamble, *for the words and figures* Regulations XXIX and XXX *read* Regulation XXIX. In section 2, *for the words and figures* Regulations XXIX of 1827 and XXX of 1827 *read* Regulation XXIX of 1827, *and for the words* the following sections *read* section 5.

[1] For these Acts *see* Vols. II & III of this Code.

[2] The entry relating to the Bombay District Municipal Act Amendment Act, 1884 (Bom. Act 2 of 1884), is omitted, as that Act was repealed by the Bombay District Municipal Act, 1901 (Bom. Act 3 of 1901), Vol. IV of this Code.

[3] Bombay Act 3 of 1886 is repealed by the Bombay General Clauses Act, 1904 (Bom. Act 1 of 1904), except Schedule B which was saved by that Act as amended by Bombay Act 5 of 1905, Vol. IV of this Code. Schedule B is printed as an appendix to Bombay Act 1 of 1904, *see ibid.*

[4] The entry relating to Bombay Regulation 2 of 1827 is omitted as s. 51 which it amended was repealed by Act 18 of 1879 as amended by Act 1 of 1903, *supra*, and Bengal Code.

[5] *Supra.*

THE SINDH INCUMBERED ESTATES ACT, 1896.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title and commencement.
2. Definitions.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

3. Application for the benefit of this Act.
4. Order to inquire.
5. Interim order of protection.
6. Verified statement to be submitted.
7. Report of inquiry and proceedings thereon.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Order of management.
9. Effect of order of management.
10. Powers of manager.
11. Payments to be made by manager and order thereof.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. Notice to claimants against debtor.
13. Claimants to present full particulars and documents.
14. Claim not duly notified to be barred.
15. Determination of debts and liabilities.
16. Power to rank debts and to fix interest.
17. "Liquidation-scheme."
18. Proceedings of Commissioner on submission of liquidation-scheme.
19. Power to relinquish management.

CHAPTER V.

Of the Proceedings subsequent to Sanction of the Liquidation-scheme.

Sections.

20. Effects of sanctioning scheme.
21. Power to remove mortgagee in possession.
22. Power to inquire into consideration given for leases.
23. Power to lease.
24. Power to raise money by mortgage or sale.
25. Separation of part of jágír lands subject to lapse.
26. Manager's receipt to be a discharge.
27. Termination of management.
28. Death of debtor during management.
29. Mortgages, etc., made by restored jágírdár valid only for his life.
30. Power to revise liquidation-scheme.

CHAPTER VI.

Of Appeal and Revision.

31. Appeal.
32. Power to call for proceedings and pass order thereon.

CHAPTER VII.

Miscellaneous.

33. Power to make rules.
34. Power to appoint new manager.
35. Managers to be public servants.
36. Investigation to be deemed a judicial proceeding.
37. Power to summon witnesses and compel production of documents.
38. Bar of suits.
39. Saving of jurisdiction of Courts in Sindh in respect of certain suits.

ACT No. XX of 1896.[1]

[The Sindh Incumbered Estates Act, 1896.]

[*16th October, 1896.*]

An Act to amend the law providing for the relief of jágírdárs and zamíndárs in Sindh.

Whereas it is expedient to amend the law providing for the relief of jágírdárs and zamíndárs in Sindh; It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Title and commencement.

1. (*1*) This Act may be called the Sindh Incumbered Estates Act, 1896; and

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1896, Pt. V, p. 252; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 236 and 243.

(2) It shall come into force at once.

2. In this Act— Definitions.

(1) "jágír land" includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mamul* or garden grants :

(2) "jágírdár" means a person who, or whose ancestor, was found in possession of jágír land in Sindh on the seventeenth day of February, 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, [1][as a jágír] :

(3) "zamíndár" means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account of land-revenue for any one of the five revenue-years next before the [2][making of an application under section 3 by or in respect of or on behalf of such person] a sum not less than three hundred rupees ; and a person holding lands in Sindh which, having been comprised in the jágír lands of a jágírdár and having ceased to be jágír lands, are assessed by the Government on account of land-revenue at a sum not less than three hundred rupees per year, and, where a joint family or any other body of co-owners hold lands of either of those descriptions, each member of that family or body who would be entitled to demand a partition of the lands : and

(4) "Commissioner" means the Commissioner in Sindh.

CHAPTER II.

Of the Application and Preliminary Inquiry.

3. (1) At any time after the commencement of this Act, any jágírdár or zamíndár or any person who would be sole heir or one of the heirs to such jágírdár or zamíndár if he then died intestate, may apply in writing to the Commissioner, stating that such jágírdár or zamíndár is subject to debts or liabilities, other than debts due, or liabilities incurred, to Government, or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case. Application for the benefit of this Act.

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[1] These words were substituted for the words "and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance" by s. 2 (*a*) of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), *infra*.

[2] These words and figure were substituted for the words "commencement of this Act" by s. 2 (*b*) of *ibid*.

(2) When any jágírdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

Order to inquire.

4. (1) When any such application is made by or on behalf of a jágírdár or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer, as he thinks fit, into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same.

(2) When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the Governor of Bombay in Council in this behalf, either to reject such application, or to direct an inquiry to be made as aforesaid.

Interim order of protection.

[1] **5.** (1) When the Commissioner has directed an inquiry under section 4, he may, if he thinks fit, further direct that, until he dismisses the application or appoints an officer under section 7, sub-section (2), clause (c),—

(a) all proceedings then pending in any Civil or Revenue Court or Office in British India, in respect of any of the debts and liabilities to which the debtor is subject, or which are charged on the whole or any part of his immoveable property, shall be stayed, and the operation of all processes, executions and attachments then in force for, or in respect of, such debts and liabilities shall be suspended ; and

(b) no fresh proceedings, processes, executions or attachments shall be instituted in, or issued by, any Civil Court or Revenue Court or Office in British India in respect of such debts and liabilities.

[2] [(2) Every direction given under sub-section (1) shall be deemed to afford protection to sureties of the debtor as well as to the debtor himself, unless in any case a surety has, by his bond, expressly accepted liability thereunder in the event of an order being made in respect of the debtor's property under section 7, sub-section (2), clause (c).]

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[1] S. 5 was re-numbered s. 5 (1) by s. 3 of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), *infra*.

[2] Sub-s. (2) was inserted by *ibid*.

6. (*1*) When an inquiry has been directed under section 4, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant or by some other competent person in the manner required by law for the verification of plaints and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require. Verified statement to be submitted.

(*2*) If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the [1]Indian Penal Code. XLV of 1860.

7. (*1*) The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner. Report of inquiry and proceedings thereon.

(*2*) On receipt of such report, the Commissioner may

(*a*) direct a further inquiry, or

(*b*) dismiss the application ; or,

(*c*) by order published in the Sindh Official Gazette, appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

Of the Order of Management.

8. (*1*) An order made under section 7, sub-section (*2*), clause (*c*) (hereinafter called "the order of management"), shall extend to all immoveable property, including any interest in joint immoveable property, of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager in the manner hereinafter provided. Order of management.

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[1] Genl. Acts, Vol. I.

(*2*) The management shall be deemed to commence from the date on which the order is published.

Effect of order of management.

9. On the publication of the order of management the following consequences shall ensue:

(*1*) all proceedings then pending in any Civil Court or Revenue Court or Office in British India in respect to the debts and liabilities mentioned in section 8 shall be stayed; and the operation of all processes, executions and attachments then in force for, or in respect of, such debts and liabilities shall be suspended;

(*2*) so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any Civil Court or Revenue Court or Office in British India in respect of such debts and liabilities;

[1][(*2a*) clauses (*1*) and (*2*) shall be deemed to afford protection to sureties of the debtor as well as to the debtor himself, unless in any case a surety has, by his bond, expressly accepted liability thereunder in the event of an order being made in respect of the debtor's property under section 7, sub-section (*2*), clause (*c*);]

(*3*) so long as the management continues, the debtor shall be incompetent—

(*a*) to enter into any contract involving him in pecuniary liability, or

(*b*) to mortgage, charge, lease or alienate the property under management or any part thereof, or

(*c*) to grant valid receipts for the rents and profits arising or accruing therefrom:

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

(*4*) so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

Powers of manager.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised, and shall receive and recover all rents, [2][profits and other sums] due in respect

[1] Cl. (*2a*) was inserted by s. 4 of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), *infra*.

[2] These words were substituted for the word "and profits" by s. 5 (*a*), *ibid*.

of the property under management, and for the purpose of recovering such rents, [1][profits and other sums] shall have, in addition to any powers possessed by a jágírdár or zamíndár, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government, [2][including the power conferred by section 176 of the [3] Bombay Land-revenue Code, 1879]: Bom. V of 1879.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

11. (*1*) From the sums received or recovered under section 10, the manager shall pay— Payments to be made by manager and order thereof.

first, the costs of the management, including the costs of necessary repairs;

secondly, the Government revenue and all debts and liabilities for the time being due or incurred to Government in respect of the property under management;

thirdly, the rent (if any) due to the jágírdár or other superior holder in respect of the said property;

fourthly, such periodical allowances as the Commissioner may, from time to time, fix for the maintenance of the debtor and his family;

fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner.

(*2*) The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8 other than those so due or incurred to Government, and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received by the manager under this Act.

CHAPTER IV.

Proof of Debts and Scheme for Liquidation.

12. On the publication of the order of management, the manager shall publish in the Sindh Official Gazette a notice in English and Sindhi, calling upon all persons having claims against the debtor, or the property under Notice to claimant against debtor.

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[1] These words were substituted for the words "and profits" by s. 5 (*a*) of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), *infra*.

[2] These words were inserted by s. 5 (*b*), *ibid*.

[3] Vol. II of this Code.

management, to notify the same in writing to such manager within six months from the date of the publication, and shall also cause copies of such notice to be exhibited at the mukhtyárkárs' kacheris in the district in which the said property lies, and at such other places as he thinks fit.

Claimants to present full particulars and documents.

13. (*1*) Every such claimant shall, along with his claim, present full particulars thereof.

(*2*) Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

(*3*) If the document is an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification and, after examining and comparing the copy with the original, shall return the book to the claimant.

(*4*) If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Claim not duly notified to be barred.

14. Every such claim (other than claims of the Government) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (*d*), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

Determination of debts and liabilities.

15. The manager shall inquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Power to rank debts and to fix interest.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

"Liquidation-scheme."

17. (*1*) When the total amount of the debts and liabilities (including those due and incurred to Government) has been finally determined, the

manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management, or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

(2) Every liquidation-scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Commissioner on submission of liquidation-scheme.

18. The Commissioner may—

(a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(b) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

Power to relinquish management.

19. (1) At any time before he has sanctioned a liquidation-scheme under section 18, the Commissioner may, by an order published in the Sindh Official Gazette, direct that on a date fixed by such order the management shall be relinquished.

(2) On the date so fixed—

(a) the management shall terminate;

(b) the owner of the property under management shall be restored to the possession thereof, subject to any leases granted under section 10;

(c) any residue of the rents and profits of the said property retained under section 11, sub-section (2), shall be paid to him; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive.

(3) In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner as the Local Government may from time to time by rule direct; and thereupon—

(1) all proceedings, processes, executions and attachments stayed or suspended under section 9 shall be for ever barred, and

(2) every debt or liability due or owing to any person which was provable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV in respect of such debt or liability.

Power to remove mortgagee in possession.

21. (*1*) If the property under management or any part thereof is in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue-year.

(*2*) If such incumbrancer refuses or neglects to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

(*3*) Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV.

Power to inquire into consideration given for leases.

[1]**22.** (*1*) If the property under management or any part thereof is in the possession of any person claiming to hold under a lease, [2] * * * * * the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was granted, and if such consideration appears to him insufficient, may by written order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease, or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and, in default of such payment, the lease shall be cancelled.

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[1] S. 22 was re-numbered s. 22 (*1*) by s. 6 (*a*) of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), *infra*.

[2] The words "dated within the three years immediately preceding the commencement of the management" were repealed by s. 6 (*b*), *ibid*.

[1][(2) Whenever the manager sets aside or cancels a lease under sub-section (1), he shall, by written order, award to the lessee such compensation, if any, as may appear to the manager to be equitable in the circumstances; and, subject to the provisions of Chapter VI, no compensation in excess of the amount so awarded shall be recoverable by the lessee in a Civil Court or otherwise.]

[1][(3) Any compensation awarded by the manager under sub-section (2) shall be deemed to be a debt mentioned in section 8, and shall rank in priority to all other debts and liabilities other than debts or liabilities due or incurred to Government.]

[1][(4) If any lessee whose lease has been so set aside or cancelled refuses or neglects to give up possession when required to do so by the manager, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said lessee and any other person obstructing or resisting on his behalf.]

Power to lease.

23. Subject to the rules made under section 33, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions as may be agreed upon.

Power to raise money by mortgage or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

(a) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or

(b) by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or

(c) by borrowing money at such rate of interest as appears reasonable to the Local Government.

Separation of part of jágír lands subject to lapse.

25. When jágír land under management is held on this condition, that on the happening of a certain event a share of the land shall lapse, but that it shall be in the discretion of the person then entitled as jágírdár to

[1] Sub-ss. (2), (3) and (4) were inserted by s. 6 (c) of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), *infra*.

divide off and relinquish in respect of the lapse such part of the land, being a fair equivalent of that share, as he thinks fit, the manager may, if he deems it convenient for the better exercise of the powers conferred by sections 23 and 24, at any time, after such consultation with persons interested as he thinks necessary, allot by written order, for relinquishment on the happening of the event, such part of the land as he thinks fit; and thereupon that part and no other shall, on the happening of the event, be relinquished.

Manager's receipt to be a discharge.

26. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

Termination of management.

27. (*1*) When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received under section 24, clause (*c*), together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the Sindh Official Gazette a notice fixing a date for the termination of the management.

(*2*) On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23 and 24.

Death of debtor during management.

28. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided,—

(1) the management shall continue and proceed in all respects as if such debtor were still living;

(2) any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by section 9, clause (*3*), sub-clauses (*b*) and (*c*); and

(3) no Civil Court or Revenue Court or Office in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for, or in respect of, any debt or liability incurred by any such person whether before or after his said succession.

Mortgages, etc., made by restored jágírdár valid

29. When a jágírdár or zamíndár has been restored under section 27, sub-section (*2*), to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made or granted

by such jágírdár or zamíndár shall be valid as to any time beyond his natural life [1][unless made or granted with the previous sanction of the Commissioner.] only for his life.

30. Notwithstanding anything contained in this Act, the Commissioner may, at any time after he has, whether before or after the commencement of this Act, sanctioned the liquidation-scheme, revise and modify the same, but not so as to affect the right of any person to receive in full before the termination of the management the amount finally awarded to him under Chapter IV. Power to revise liquidation-scheme.

CHAPTER VI.

Of Appeal and Revision.

31. (*1*) An appeal against any decision or order under sections 14, 15, 16 and 22, and imposing a fine or imprisonment in exercise of the powers conferred by section 37, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order. Appeal.

(*2*) There shall be no appeal against the decision of the Commissioner on such appeal.

32. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit. Power to call for proceedings and pass order thereon.

CHAPTER VII.

Miscellaneous.

33. (*1*) The Commissioner, with the previous sanction of the Governor of Bombay in Council, may, from time to time, make rules consistent with this Act— Power to make rules.

(*a*) to regulate the security to be required from subordinate officers under this Act;

(*b*) to regulate the procedure in all cases under this Act;

(*c*) for the guidance of officers inquiring into and determining on claims under Chapter IV; and in particular as to the allowance of

[1] These words were added by s. 2 and First Sch. of the Bombay Repealing and Amending Act, 1919 (Bom. Act 2 of 1919), Vol. V of this Code.

interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities, from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder;

(*d*) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(*e*) generally to carry out the provisions of this Act.

(2) Such rules shall be published in the Sindh Official Gazette, and shall thereupon have the force of law.

Power to appoint new manager.

34. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager, and the new manager shall have the same powers as if he had been originally appointed.

Managers to be public servants.

35. Every manager appointed under this Act shall be deemed a public servant within the meaning of [1] the Indian Penal Code. XLV of 1860

Investigation to be deemed a judicial proceeding.

36. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the [1] Indian Penal Code. XLV of 1860.

Power to summon witnesses and compel production of documents.

37. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible in the same manner, as is provided in the case of a Civil Court by the [2] Code of Civil Procedure.

Bar of suits.

38. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Saving of jurisdiction of Courts in Sindh in respect of certain suits.

39. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

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[1] Genl. Acts, Vol. I.

[2] *See* now Act 5 of 1908, Genl. Acts, Vol. VI.

THE INDIAN UNIVERSITIES ACT, 1904.

CONTENTS.

SECTIONS.

1. Short title and commencement.

2. Interpretation.

The University.

3. Incorporation and powers of the University.

4. Constitution and powers of the Senate.

Fellows.

5. *Ex-officio* Fellows.

6. Ordinary Fellows.

7. Ordinary Fellows elected by registered Graduates.

8. Ordinary Fellows elected by Senates.

9. Election by the Faculties.

10. Nomination by the Chancellor.

11. Vacating of office.

Transitory Provisions.

12. [*Repealed.*]

Honorary Fellows.

13. Honorary Fellows.

SECTIONS.

Faculties and Syndicate.

14. Faculties.

15. Syndicate.

Degrees.

16. Degrees, diplomas, licenses, titles and marks of honour.

17. Honorary degrees.

18. Cancellation of degrees and the like.

Affiliated Colleges.

19. Certificate required of candidates for examination.

20. Existing Colleges.

21. Affiliation.

22. Extension of affiliation.

23. Inspection and reports.

24. Disaffiliation.

Regulations.

25. Regulations.

26. New body of regulations.

Miscellaneous.

27. Territorial exercise of powers.

28. [*Repealed.*]

29. [*Repealed.*]

THE FIRST SCHEDULE.—*Ex-officio* Fellows of the University.

THE SECOND SCHEDULE.—Enactments repealed.

ACT No. VIII OF 1904.[1]

[THE INDIAN UNIVERSITIES ACT, 1904.]

[*24th March, 1904.*]

An Act to amend the law relating to the Universities of British India.

WHEREAS by Acts II, [2] XXII and XXVII of 1857, Act XIX of 1882 and Act XVIII of 1887, Universities were established and incorporated at Calcutta, Bombay, Madras, Lahore and Allahabad;

And whereas by [3] Act XLVII of 1860 the Universities of Calcutta, Madras and Bombay were empowered to confer such degrees as should be appointed in the manner provided by the Act;

And whereas by [3] Act I of 1884 the Universities of Calcutta, Madras and Bombay were further empowered to confer the honorary degree of Doctor in the Faculty of Law;

And whereas it is expedient to amend the law relating to the Universities of British India;

It is hereby enacted as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Indian Universities Act, 1904; and

(*2*) It shall come into force on such date as the Government may fix in this behalf by [4] notification in the Gazette of India or the local official Gazette, as the case may be.

Interpretation.

2. (*1*) This Act shall be deemed to be part of each of the Acts by which the said [5] five Universities were respectively established and incorporated.

(*2*) In this Act, unless there is anything repugnant in the subject of context,—

(*a*) the term "College" or "affiliated College" includes any collegiate institution affiliated to or maintained by the University:

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1903, Pt. V, p. 528; for Report of the Select Committee, *see ibid*, 1904, Pt. V, p. 29; and for Proceedings in Council, *see ibid*, 1903, Pt. VI, p. 178, and *ibid*, 1904, Pt. VI, pp. 4, 20, 81, 137 and 162.

[2] *Supra*.

[3] Now repealed by this Act.

[4] The Act was brought into force within the territorial limits of the Bombay University as defined in Notification No. 717, dated 20th August, 1904, on the 1st September, 1904; for both Notifications, *see* Gazette of India, 1904, Pt. I, 627 and 628.

[5] The University of Bombay was incorporated by the Bombay University Act, 1857 (22 of 1857), *supra*.

(*b*) the expression "the Government" means

* * * * the Local Government

and

(*c*) the expressions "the University" and "the Act of Incorporation" and any expression denoting any University, authority or officer or any Statute, regulation, rule or by-law of the University shall be construed with reference to each of the said Universities respectively.

The University.

Incorporation and powers of the University.

3. The University shall be, and shall be deemed to have been, incorporated for the purpose (among others) of making provision for the instruction of students, with power to appoint University Professors and Lecturers, to hold and manage educational endowments, to erect, equip and maintain University libraries, laboratories and museums, to make regulations relating to the residence and conduct of students, and to do all acts, consistent with the Act of Incorporation and this Act, which tend to the promotion of study and research.

Constitution and powers of the Senate.

4. (*1*) Notwithstanding anything contained in the Act of Incorporation, the Body Corporate of the University shall consist of—

(*a*) the Chancellor;

[1] * * * * * * *

(*c*) the Vice-Chancellor;

(*d*) the *ex-officio* Fellows; and

(*e*) the Ordinary Fellows—

(i) elected by registered Graduates or by the Senate,

(ii) elected by the Faculties, and

(iii) nominated by the Chancellor.

(*2*) The Ordinary Fellows shall, save as herein otherwise provided, hold office for five years:

Provided that an Ordinary Fellow who has vacated his office may, subject to the provisions of this Act, be elected or nominated to be an Ordinary Fellow.

(*3*) The Body Corporate shall be the Senate of the University, and all powers which are, by the Act of Incorporation or by this Act, conferred upon the Senate, or upon the Chancellor, Vice-Chancellor and Fellows in their corporate capacity, [1] * * * * *

[1] Words repealed by s. 4 and Sch. of the Calcutta University Act, 1921 (7 of 1921), are omitted.

shall be vested in, and exercised by, the Senate constituted under this Act, and all duties and liabilities imposed upon the University by the Act of Incorporation shall be deemed to be imposed upon the Body Corporate as constituted under this Act.

(*4*) No act done by the University shall be deemed to be invalid merely by reason of any vacancy among either class of elected Ordinary Fellows, or by reason of the total number of Ordinary Fellows or of members of the profession of education to be included among Ordinary Fellows, being less than the minimum prescribed by this Act.

Fellows.

5. (*1*) Notwithstanding anything contained in the Act of Incorporation, the persons for the time being performing the duties of the offices mentioned in the list contained in the First Schedule to this Act or added to the said list under sub-section (*2*) shall be the *ex-officio* Fellows of the University. *Ex-officio* Fellows.

(*2*) The Government may, by notification published [1] * * in the local official Gazette, [1] * * make additions to, or alterations in, the list of offices contained in the said Schedule :

Provided that the number of *ex-officio* Fellows shall not exceed ten.

6. (*1*) In the case of the Universities of Calcutta, Bombay and Madras, the number of Ordinary Fellows shall not be less than fifty nor exceed one hundred ; and of such number— Ordinary Fellows.

(*a*) ten shall be elected by registered Graduates ;

(*b*) ten shall be elected by the Faculties ; and

(*c*) the remainder shall be nominated by the Chancellor.

(*2*) [*Relates only to the University of the Punjab.*]

(*3*) The election of any Ordinary Fellow shall be subject to the approval of the Chancellor.

(*4*) Elections of Ordinary Fellows by the Faculties and nominations of such Fellows by the Chancellor under this section shall be made in such manner as to secure that not less than two-fifths of the Fellows so elected and so nominated respectively shall be persons following the profession of education.

7. (*1*) Once in every year on such date as the Chancellor may appoint in this behalf, there shall, if necessary, be an election to fill any vacancy among the Ordinary Fellows elected by registered Graduates. Ordinary Fellows elected by registered Graduates.

[1] The words " in the Gazette of India or " and the words " as the case may be " were repealed by s. 4 and Sch. of the Calcutta University Act, 1921 (7 of 1921).

(*2*) The Syndicate shall maintain a register on which any Graduate who—

(*a*) has taken the degree of Doctor or Master in any Faculty, or

(*b*) has graduated in any Faculty not less than ten years before registration,

shall, subject to the payment of an initial fee of such amount as may be prescribed by the regulations, be entitled to have his name entered upon application made within the period of three years from the commencement of this Act, or of one year from the date on which he becomes so entitled :

Provided that, if such application is made after the expiry of either of the said periods, the applicant shall be entitled to have his name entered on payment of the said initial fee, and of such further sum as may be prescribed by the regulations.

(*3*) The name of any Graduate entered on the register shall, subject to the payment of an annual fee of such amount as may be prescribed by the regulations, be retained thereon, and, in case of default, shall be removed therefrom, but shall, at any time, be re-entered upon payment of all arrears :

Provided that a Graduate whose name has been already entered on the register may at any time compound for all subsequent payments of the annual fee by paying the sum prescribed in this behalf by the regulations.

(*4*) No person other than a Graduate whose name is entered on the said register shall be qualified to vote or to be elected at an election held under sub-section (*1*).

(*5*) A Graduate registered under this section shall be entitled to such further privileges as may be determined by the regulations.

8. *Ordinary Fellows elected by Senates.* [*Relates only to the Universities of the Punjab and Allahabad*].

Election by the Faculties.

9. (*1*) Once in every year, on such date as the Chancellor may appoint in this behalf, there shall, if necessary, be an election to fill any vacancy among the Ordinary Fellows elected by the Faculties.

(*2*) An election under sub-section (*1*) shall be held, subject to such directions prescribing the qualifications of the persons to be elected as may, from time to time, be given by the Chancellor, with a view to secure the return of duly qualified persons and the fair representation of different branches of study in the Senate.

10. Subject to the provisions of section 6, the Chancellor may nominate any number of fit and proper persons to be Ordinary Fellows. Nomination by the Chancellor.

11. (*1*) Any Ordinary Fellow may, by letter addressed to the Chancellor, resign his office. Vacating of office.

(*2*) Where any Ordinary Fellow has not attended a meeting of the Senate, other than a Convocation, during the period of one year, the Chancellor may declare his office to be vacated.

12. [*Transitory Provisions.*] *Rep. Act X of 1914.*

Honorary Fellows.

13. (*1*) (*a*) A Fellow holding office at the commencement of this Act shall cease to be a Fellow. Honorary Fellows.

(*b*) Where a Fellow included in clause (*a*) does not become a Fellow under this Act, he shall be an Honorary Fellow for life.

(*c*) Where a Fellow included in clause (*a*) becomes a Fellow under this Act, he shall, whenever and so often as he ceases to be a Fellow under this Act, become an Honorary Fellow as provided in clause (*b*).

(*2*) The Chancellor may nominate any person to be an Honorary Fellow for life, who is eminent for his attainments in any branch of learning, or is an eminent benefactor of the University, or is distinguished for services rendered to the cause of education generally.

(*3*) Notwithstanding anything contained in this section, any Fellow who, at the commencement of this Act, is entitled as such to vote for the election of any person to be a member of any Council for the purpose of making laws and regulations or of any local authority shall continue to be so entitled as if this Act had not been passed.

Faculties and Syndicate.

14. (*1*) Nothing contained in the [1] Act of Incorporation shall be deemed to prohibit the constitution of a new Faculty or the abolition or re-constitution of any existing Faculty by the Senate under regulations made in accordance with the provisions of this Act. Faculties.

[1] In the case of the University of Bombay, Act 22 of 1857, *supra.*

(2) Regulations made under sub-section (1) may—

(a) provide for the assignment of Fellows to the several Faculties by order of the Senate ; and

(b) empower the Fellows so assigned to add to their number, in such manner and for such period as may be prescribed, Graduates in the Faculty and other persons possessing special knowledge of the subjects of study represented by the Faculty :

Provided that the number of persons so to be added to the Faculty shall not exceed half the number of Fellows assigned to the Faculty.

(3) A person added to a Faculty under sub-section (2), clause (b), shall have the right to take part in the ordinary business of the Faculty, and in any election of an Ordinary Fellow by the Faculty, but shall not be entitled to take part in the election of the Syndicate.

Syndicate.

15. (1) The executive government of the University shall be vested in the Syndicate, which shall consist of—

(a) the Vice-Chancellor as Chairman ;

(b) the Director of Public Instruction for the Province in which the head-quarters of the University are situated ; and, in the case of the University of Allahabad, also the Director of Public Instruction in the Central Provinces ; and

(c) not less than seven or more than fifteen *ex-officio* or Ordinary Fellows elected by the Senate or by the Faculties in such manner as may be provided by the regulations, to hold office for such period as may be prescribed by the regulations.

(2) The regulations referred to in sub-section (1) shall be so framed as to secure that a number not falling short by more than one of a majority of the elected members of the Syndicate shall be Heads of, or Professors in, Colleges affiliated to the University.

(3) If in the case of any election the question is raised whether any person is or is not a Professor within the meaning of sub-section (2), the question shall be decided by the Senate.

Degrees.

16. The Senate may institute and confer such degrees, and grant such diplomas, licenses, titles and marks of honour in respect of degrees and examinations, as may be prescribed by regulation. Degrees, diplomas, licenses, titles and marks of honour.

17. Where the Vice-Chancellor and not less than two-thirds of the other members of the Syndicate recommend that an honorary degree be conferred on any person on the ground that he is, in their opinion, by reason of eminent position and attainments, a fit and proper person to receive such a degree, and where their recommendation is supported by not less than two-thirds of the Fellows present at a meeting of the Senate and is confirmed by the Chancellor, the Senate may confer on such person the honorary degree so recommended without requiring him to undergo any examination. Honorary degrees.

18. Where evidence is laid before the Syndicate showing that any person on whom a degree, diploma, license, title or mark of honour conferred or granted by the Senate has been convicted of what is, in their opinion, a serious offence, the Syndicate may propose to the Senate that the degree, diploma, license, title or mark of honour be cancelled, and, if the proposal is accepted by not less than two-thirds of the Fellows present at a meeting of the Senate and is confirmed by the Chancellor, the degree, diploma, license, title or mark of honour shall be cancelled accordingly. Cancellation of degrees and the like.

Affiliated Colleges.

19. Save on the recommendation of the Syndicate, by special order of the Senate, and subject to any regulations made in this behalf, no person shall be admitted as a candidate at any University examination, other than an examination for matriculation, unless he produces a certificate from a College affiliated to the University, to the effect that he has completed the course of instruction prescribed by regulation. Certificate required of candidates for examination.

20. Any College affiliated to the University before the passing of this Act, may continue to exercise the rights conferred upon it by such affiliation, save in so far as such rights may be withdrawn or restricted in the exercise of any power conferred by the [1] Act of Incorporation or by this Act. Existing Colleges.

21. (*1*) A College applying for affiliation to the University shall send letter of application to the Registrar, and shall satisfy the Syndicate— Affiliation.

(*a*) that the College is to be under the management of a regularly constituted governing body ;

[1] In the case of the University of Bombay, Act 22 of 1857, *supra*.

(*b*) that the qualifications of the teaching staff and the conditions governing their tenure of office are such as to make due provision for the courses of instruction to be undertaken by the College ;

(*c*) that the buildings in which the College is to be located are suitable, and that provision will be made, in conformity with the regulations, for the residence, in the College or in lodgings approved by the College, of students not residing with their parents or guardians, and for the supervision and physical welfare of students ;

(*d*) that due provision has been or will be made for a library ;

(*e*) where affiliation is sought in any branch of experimental science, that arrangements have been or will be made in conformity with the regulations for imparting instruction in that branch of science in a properly equipped laboratory or museum ;

(*f*) that due provision will, so far as circumstances may permit, be made for the residence of the Head of the College and some members of the teaching staff in or near the College or the place provided for the residence of students ;

(*g*) that the financial resources of the College are such as to make due provision for its continued maintenance ;

(*h*) that the affiliation of the College, having regard to the provision made for students by other Colleges in the same neighbourhood, will not be injurious to the interests of education or discipline ; and

(*i*) that the College rules fixing the fees (if any) to be paid by the students have not been so framed as to involve such competition with any existing College in the same neighbourhood as would be injurious to the interests of education.

The application shall further contain an assurance that after the College is affiliated any transference of management and all changes in the teaching staff shall be forthwith reported to the Syndicate.

(*2*) On receipt of a letter of application under sub-section (*1*), the Syndicate shall—

(*a*) direct a local inquiry to be made by a competent person authorised by the Syndicate in this behalf ;

(*b*) make such further inquiry as may appear to them to be necessary ; and

(*c*) report to the Senate on the question whether the application should be granted or refused, either in whole or in part, embodying in such report the results of any inquiry under clauses (*a*) and (*b*).

And the Senate shall, after such further inquiry (if any) as may appear to them to be necessary, record their opinion on the matter.

(*3*) The Registrar shall submit the application and all proceedings of the Syndicate and Senate relating thereto to the Government, who, after such further inquiry as may appear to them to be necessary, shall grant or refuse the application or any part thereof.

(*4*) Where the application or any part thereof is granted, the order of the Government shall specify the courses of instruction in respect of which the College is affiliated; and, where the application or any part thereof is refused the grounds of such refusal shall be stated.

(*5*) An application under sub-section (*1*) may be withdrawn at any time before an order is made under sub-section (*3*).

Extension of affiliation.

22. Where a College desires to add to the courses of instruction in respect of which it is affiliated, the procedure prescribed by section 21 shall, so far as may be, be followed.

Inspection and reports.

23. (*1*) Every College affiliated to the University, whether before or after the commencement of this Act, shall furnish such reports, returns and other information as the Syndicate may require to enable it to judge of the efficiency of the College.

(*2*) The Syndicate shall cause every such College to be inspected from time to time by one or more competent persons authorised by the Syndicate in this behalf.

(*3*) The Syndicate may call upon any College so inspected to take, within a specified period, such action as may appear to them to be necessary in respect of any of the matters referred to in section 21, sub-section (*1*).

Disaffiliation.

24. (*1*) A member of the Syndicate who intends to move that the rights conferred on any College by affiliation be withdrawn, in whole or in part, shall give notice of his motion, and shall state in writing the grounds on which the motion is made.

(*2*) Before taking the said motion into consideration, the Syndicate shall send a copy of the notice and written statement mentioned in sub-section (*1*) to the Head of the College concerned, together with an intimation that any representation in writing submitted within a period specified in such intimation on behalf of the College will be considered by the Syndicate:

Provided that the period so specified may, if necessary, be extended by the Syndicate.

(*3*) On receipt of the representation or on expiration of the period referred to in sub-section (*2*), the Syndicate, after considering the notice of motion, statement and representation and after such inspection by any competent person authorised by the Syndicate in this behalf, and such further inquiry as may appear to them to be necessary, shall make a report to the Senate.

(*4*) On receipt of the report under sub-section (*3*), the Senate shall, after such further inquiry (if any) as may appear to them to be necessary, record their opinion on the matter.

(*5*) The Registrar shall submit the proposal and all proceedings of the Syndicate and Senate relating thereto to the Government, who, after such further inquiry (if any) as may appear to them to be necessary, shall make such order as the circumstances may, in their opinion, require.

(*6*) Where by an order made under sub-section [1] [(5)] the rights conferred by affiliation are withdrawn, in whole or in part, the grounds for such withdrawal shall be stated in the order.

Regulations.

Regulations.

25. (*1*) The Senate, with the sanction of the Government, may from time to time make regulations consistent with the [2] Act of Incorporation as amended by this Act and with this Act to provide for all matters relating to the University.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for—

(*a*) the procedure to be followed in holding any election of Ordinary Fellows ;

(*b*) the constitution, re-constitution or abolition of Faculties, the proportion in which the members, other than the *ex-officio* members of the Syndicate shall be elected to represent the various Faculties, and the mode in which such election shall be conducted ;

(*c*) the procedure at meetings of the Senate, Syndicate and Faculties, and the quorum of members to be required for the transaction of business ;

(*d*) the appointment of Fellows and others to be members of Boards of Studies, and the procedure of such Boards and the quorum of members to be required for the transaction of business ;

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[1] This figure was substituted for the figure "(3)" by the Repealing and Amending Act, 1914 (10 of 1914), Genl. Acts, Vol. VIII.

[2] In the case of the University of Bombay, Act 22 of 1857, *supra*.

(*e*) the appointment and duties of the Registrar and of officers and servants of the University, and of Professors and Lecturers appointed by the University;

(*f*) the appointment of Examiners, and the duties and powers of Examiners in relation to the examinations of the University;

(*g*) the form of the certificate to be produced by a candidate for examination under section 19 and the conditions on which any such certificate may be granted;

(*h*) the registers of Graduates and students to be kept by the University, and the fee (if any) to be paid for the entry or retention of a name on any such register;

(*i*) the inspection of Colleges and the reports, returns and other information to be furnished by Colleges;

(*j*) the registers of students to be kept by Colleges affiliated to the University;

(*k*) the rules to be observed and enforced by Colleges affiliated to the University in respect of the transfer of students;

(*l*) the fees to be paid in respect of the courses of instruction given by Professors or Lecturers appointed by the University;

(*m*) the residence and conduct of students;

(*n*) the courses of study to be followed and the conditions to be complied with by candidates for any University examination, other than an examination for matriculation, and for degrees, diplomas, licenses, titles, marks of honour, scholarships and prizes conferred or granted by the University;

(*o*) the conditions to be complied with by schools desiring recognition for the purpose of sending up pupils as candidates for the matriculation examination, and the conditions to be complied with by candidates for matriculation, whether sent up by recognised schools or not;

(*p*) the conditions to be complied with by candidates, not being Students of any College affiliated to the University, for degrees, diplomas, licenses, titles, marks of honour, scholarships and prizes conferred or granted by the University; and

(*q*) the alteration or cancellation of any rule, regulation, Statute or by-law of the University in force at the commencement of this Act.

New body of regulations.

26. (*1*) Within one year after the commencement of this Act, or within such further period as the Government may fix in this behalf,—

(*a*) the Senate as constituted under this Act shall cause a revised body of regulations to be prepared and submitted for the sanction of the Government;

(*b*) if any additions to, or alterations in, the draft submitted appear to the Government to be necessary, the Government, after consulting the Senate, may sanction the proposed body of regulations with such additions and alterations as appear to the Government to be necessary.

(2) Where a draft body of regulations is not submitted by the Senate within the period of one year after the commencement of this Act, or within such further period as may be fixed under sub-section (*1*), the Government may, within one year after the expiry of such period or of such further period, make regulations which shall have the same force as if they had been prepared and sanctioned under sub-section (*1*).

Miscellaneous.

Territorial exercise of powers.

27. The Governor General in Council may, by general or special order, [1]define the territorial limits within which, and specify the Colleges in respect of which, any powers conferred by or under the [2]Act of Incorporation or this Act shall be exercised.

28. [*Rector.*] *Repealed by section 4 and Sch., Act VII of 1921.*

29. [*Repeals.*] *Repealed by Act X of 1914.*

THE FIRST SCHEDULE.

(*Section 5.*)

EX-OFFICIO FELLOWS OF THE UNIVERSITY.

[3]* * * * * *

The University of Bombay.

The Chief Justice of the High Court of Judicature at Bombay.

The Bishop of Bombay.

The Ordinary Members of the Council of the Governor of Bombay.

The Director of Public Instruction in Bombay.

[4]* * * * * *

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. Act X of 1914.*]

[1] For notification defining the territorial limits of the University of Bombay, *see* Gazette of India, 1904, Pt. I, p. 627.

[2] In the case of the University of Bombay, Act 22 of 1857, *supra.*

[3] Relates to the University of Calcutta and has not therefore been reproduced.

[4] Relates to the Universities of Madras, and the Punjab and has not therefore been reproduced.

ACT No. XIV OF 1904.[1]

[THE CITY OF BOMBAY IMPROVEMENT (SUPPLEMENTARY) ACT, 1904.]

[*21st October, 1904.*]

An Act to supplement certain provisions of the [2] City of Bombay Improvement Act, 1898.

WHEREAS it is expedient to supplement by legislation in the Council of the Governor General for making Laws and Regulations certain provisions of the [2] City of Bombay Improvement Act, 1898; It is hereby enacted as follows:—

Bom. IV of 1898.

Bom. IV of 1898.

1. The [2] City of Bombay Improvement Act, 1898, shall, so far as regards the appellate jurisdiction conferred upon the High Court by section 48, sub-section (*11*) thereof, be as valid as if it had been passed by the Governor General of India in Council at a meeting for the purpose of making Laws and Regulations.

Confirmation of section 48, sub-section (*11*), Bom. Act IV, 1898.

2. Subject to the provisions of section 48, sub-section (*11*), of the said Act, the provisions of the [3] Code of Civil Procedure with respect to appeals from original decrees shall, so far as they can be made applicable, apply to appeals under that sub-section, and orders passed therein by the High Court may, on application to the Chief Judge of the Small Cause Court, be executed by him as if they were decrees made by himself.

Procedure applicable to appeals under section 48, sub-section (*11*), Bom. Act IV, 1898.

3. An appeal to the High Court under section 48, sub-section (*11*), of the said Act, shall, for the purposes of No. 156 of the Second Schedule to the [4] Indian Limitation Act, 1877, be deemed to be an appeal under the [3] Code of Civil Procedure in a case not provided for by No. 151 and No. 153 of that Schedule.

XV of 1877.

Period of limitation for such appeals.

ACT No. II OF 1906.[5]

[*20th March, 1906.*]

An Act to amend the Sindh Incumbered Estates Act, 1896.

XX of 1896.

WHEREAS it is expedient to amend the [6] Sindh Incumbered Estates Act, 1896; It is hereby enacted as follows:—

1. This Act may be called the Sindh Incumbered Estates (Amendment) Act, 1906.

Short title.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1904, Pt. V, p. 95; and for Proceedings in Council, *see ibid*, Pt. VI, pp. 370 and 372. The short title was given by Bom. Act. 2 of 1921, Vol. V of this Code.

[2] *See* Vol. IV of this Code.

[3] *See* now Act 5 of 1908, Genl. Acts, Vol. VI.

[4] *See* now Act 9 of 1908, *ibid.*

[5] For Statement of Objects and Reasons, *see* Gazette of India, 1905, Pt. V, p. 2; for Report of the Select Committee, *see ibid*, 1905, Pt. V, p. 1; and for Proceedings in Council, *see ibid*, 1905, Pt. VI, pp. 2, 155, and *ibid*, 1906, Pt. VI, pp. 2 and 12.

[6] *Supra.*

Amendment of Act XX, 1896, section 2.

2. In section 2 of the [1]Sindh Incumbered Estates Act, 1896, there shall be substituted— XX of 1896.

(*a*) in clause (*2*), for the words "and to whom, or to whose ancestor a sanad has been, or hereafter may be, granted-confirming such continuance" the words "as a jagir," and

(*b*) in clause (*3*), for the words "commencement of this Act" the words and figure "making of an application under section 3 by or in respect of or on behalf of such person."

Amendment of section 5.

3. Section 5 of the said Act shall be re-numbered 5 (*1*), and the following shall be inserted thereafter, namely :—

[*Supra*, p. 238.]

Amendment of section 9.

4. After clause (*2*) of section 9 of the said Act the following shall be inserted, namely :—

[*Supra*, p. 240.]

Amendment of section 10.

5. In section 10 of the said Act,—

(*a*) for the words "and profits", in both places where they occur, the words "profits and other sums" shall be substituted, and

(*b*) after the word "Government" the words "including the power conferred by section 176 of the [2]Bombay Land-revenue Code, 1879," shall be inserted. Bom. Act. V of 1879.

Amendment of section 22.

6. (*a*) Section 22 of the said Act shall be re-numbered 22 (*1*).

(*b*) The words "dated within the three years immediately preceding the commencement of the management" in the said section 22 (*1*), are hereby repealed.

(*c*) After the said section 22 (*1*) the following shall be inserted, namely :—

[*Supra*, p. 245.]

Repeal.

7. The Sindh Incumbered Estates Act, 1881, and the Sindh Incumbered Estates Act, 1884, are hereby repealed. XX of 1881. XI of 1884.

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[1] *Supra.*

[2] Vol. II of this Code.

ACT No. IV OF 1907.[1]

[THE REPEALING AND AMENDING (RATES AND CESSES) ACT, 1907.]

[*20th March, 1907.*]

An Act to repeal and amend certain Enactments relating to abolished rates and cesses.

WHEREAS certain rates and cesses leviable in the territories specified in the Schedule have been abolished, and it is therefore expedient to repeal or amend the enactments specified in the said Schedule; It is hereby enacted as follows :—

1. This Act may be called the Repealing and Amending (Rates and Cesses) Act, 1907. Short title.

2. The enactments specified in the Schedule shall be repealed or modified to the extent and in the manner mentioned in the third column thereof. Enactments in schedule repealed or modified.

THE SCHEDULE.

Number, year and short title.	Sections.	Extent of repeal or modification.
[2] * * * *	* * *	* * *
B.—The Presidency of Bombay.		
Bombay Act IV of 1881 (The Sindh Village-officers Act, 1881).	6	The whole section to be repealed.
Bombay Act II of 1888 (*An Act to amend the Sindh Village-officers Act, 1881*).	3	The whole section to be repealed.
Bombay Act II of 1898 (*An Act to amend the Sindh Village-officers Act, 1881, as amended by Bombay Act II of 1888*).	2 and 3	The whole of both sections to be repealed.
[2] * * * *	*	* * * *

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1906, Pt. V, p. 51; and for Proceedings in Council, *see ibid*, 1906, Pt. VI, p. 128, and *ibid*, 1907, p. 31.

[2] The omitted portions of this Schedule relate to other Provinces of British India, and are not therefore reproduced here.

ACT No. IV OF 1908.[1]

[THE CORONERS (AMENDMENT) ACT, 1908.]

[*14th February, 1908.*]

An Act further to amend the Coroners Act, 1871, *and the Prisoners Act, 1900.*

WHEREAS it is expedient further to amend the [2] Coroners Act, 1871, *and the* [3] *Prisoners Act, 1900*; It is hereby enacted as follows:— IV of 1871. III of 1900.

Short title.

1. This Act may be called the Coroners (Amendment) Act, 1908.

Amendment of section 9, Act IV of 1871.

2. In section 9 of [4][the Coroners Act, 1871, hereinafter referred to as] the said Act, for the word "buried" the words "disposed of" shall be substituted.

Amendment of section 11, Act IV of 1871.

3. In section 11 of the said Act, for the words "where the first was insufficient" the words "where the Coroner considers it necessary or desirable in the interests of justice to take a further inquisition" shall be substituted.

Addition of proviso to section 15, Act IV of 1871.

4. To section 15 of the said Act the following shall be added, namely:—

"Provided that the Coroner may, with the concurrence of a majority of the jury, dispense with a view of the body, if he is satisfied, from medical evidence or medical certificates, that no advantage would result from such viewing."

Amendment of section 17, Act IV of 1871.

5. In section 17 of the said Act, for the words and figures "Act No. XV of 1869 (*to provide facilities for obtaining the evidence and appearance of prisoners and for service of process upon them*)," the words and figures "Part IX of the Prisoners Act, 1900", shall be substituted.

Addition of new section 18A to Act IV of 1871.

6. After section 18 of the said Act the following shall be inserted, namely:—

Report of Chemical Examiner.

"18 A. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Act, may be used as evidence in any inquest under this Act and in any subsequent inquiry, trial or other proceeding under the [3] Code of Criminal Procedure, 1898." V of 1898.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1907, Pt. V, p. 2, for Report of Select Committee; *see ibid*, 1908, Pt. V, p. 31, and for Proceedings in Council, *see ibid*, 1907, Pt. VI, p. 6, and *ibid*, 1908, Pt. VI, p. 12.

[2] *Supra.*

[3] Genl. Acts, Vol. V.

[4] These words and figures were inserted by Schedule I of the Repealing and Amending Act, 1914 (10 of 1914), Genl. Acts, Vol. VIII.

7. To section 21 of the said Act the following shall be added, namely :— "and the whole, or such part thereof as to the Coroner seems fit, shall, in default of attendance by the jurors, be recoverable in the same manner as a fine imposed under section 31."

Addition to section 21, Act IV of 1871.

8. For section 25 of the said Act the following shall be substituted, namely :

Substitution of new section 25, Act IV of 1871.

"25. When the jury or a majority of the jury find that the death of the deceased person was occasioned by an act which amounts to an offence under any law in force in British India, the Coroner shall immediately after the inquest forward a copy of the inquisition, together with the names and addresses of the witnesses, to the Commissioner of Police."

Procedure where death is found due to an act amounting to an offence.

9. For section 26 of the said Act the following shall be substituted, namely :—

Substitution of new section 26, Act IV of 1871.

"26. The Coroner may also, where the verdict justifies him in so doing, issue his warrant for the apprehension of the person who is found to have caused the death of the deceased person, and send him forthwith to a Magistrate empowered to commit him for trial."

Power to arrest and commit for trial.

10. Section 27 of the said Act is hereby repealed.

Repeal of section 27, Act IV of 1871.

11. In section 28 of the said Act, for the word "burial" the word "disposal" shall be substituted.

Amendment of section 28, Act IV of 1871.

12. In the Second Schedule of the said Act, for the words "on view of the body of A. B. then and there lying dead" the words "in the case of A. B. deceased" shall be substituted.

Amendment of Second Schedule, Act IV of 1871.

[1] * * * * * *

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[1] Section 13 amends s. 11 of the Prisoners Act, 1900 (3 of 1900), and is therefore not reproduced here, *see* Genl. Acts, Vol. VI.

ACT No. V of 1918.[1]

[The Criminal Justice Aden (Amendment) Act, 1918.]

[*6th March, 1918.*]

An Act to amend the law to provide for the administration of criminal justice at Aden.

Whereas it is expedient to amend the law to provide for the administration of criminal justice at Aden; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Criminal Justice Aden (Amendment) Act, 1918.

Insertion of new section 22A in Act II of 1864

2. After section 22 of [2] Act II of 1864 (*An Act to provide for the administration of civil and criminal justice at Aden*) (hereinafter referred to as the said Act), the following section shall be inserted, namely :—

[*Supra*, p. 90.]

Amendment of section 31, Act II of 1864.

3. In section 31 of the said Act, after the words "Court of the Resident," wherever they occur, the words "and the Court of the Additional Sessions Judge" shall be inserted, and for the words "said Court," the words "said Courts" shall be substituted.

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[1] For Statement of Objects and Reasons, *see* Gazette of India, 1918, Pt. V, p. 8; and for Proceedings in Council, *see ibid*, 1918, Pt. VI, pp. 140 and 286.

[2] *Supra*.